(21,272.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 208.

MARIA ROURA AND JUANA ROURA, PLAINTIFFS IN ERROR,

vs

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

MARIA and JUANA ROURA, Plaintiffs in Error,
vs.
GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

Transcript of Record on Writ of Error.

Record of the proceedings of the Supreme Court of the Philippine Islands in the cause and matter above entitled and hereinafter stated, the same being disposed of at a regular term of said court held at the city of Manila, Philippine Islands, on the 22nd day of March, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America the one hundred thirty-first.

Present: The Honorable Cayetano S. Arellano, Chief Justice, and Torres, Mapa, Johnson, Carson, Willard and Tracey, Associate Justices.

MARIA ROURA and JUANA ROURA, Plaintiffs and Appellants,
versus
GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant and Appellee.

Said action was commenced in the Court of Land Registration of the Philippine Islands on the 20th day of September, A. D. 1904, and proceeded to the determination of said court given and made the 21st of February, 1905, and thereafter appealed to the Supreme Court of the Philippine Islands, and proceeded to final disposition by said court at the term and day above written,
2 and during the progress thereof pleadings and papers were filed, process was issued and returned, and orders of the court were made and entered in the order and on the dates hereinafter stated, to-wit:

On the 20th day of September, 1904, plaintiffs in error, by their attorneys, presented and filed in the Court of Land Registration of the Philippine Islands the following petition, to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

MARIA ROURA and JUANA ROURA, Petitioners.

Felix Ferrer y Pascual, Attorney.

Petition for Registration.

The undersigned, Felix Ferrer y Pascual, a practicing attorney, domiciled at No. 32 Pasaje de Norzagaray, District of Binondo, Manila, P. I., on behalf of the sisters Maria and Juana Roura, and by virtue of the accompanying power of attorney, hereby petitions that in conformity with the Land Registration Act, the property hereinafter specified be inscribed and the corresponding title thereto become duly registered and ratified.

He furthermore alleges:

1st. That his principals are the owners in fee, in the proportion of an undivided half interest in each of them, of a parcel of land suitable for building purposes, situate in the Barrio of Sibul, of the Municipality of San Miguel de Mayumo, of the Province of Bulacan, P. I., whose superficial area and boundaries are as follows:

3 The superficial area measures 2776.87 square meters, and is bounded on the north, in part, by the property of one of the petitioners, Maria Roura; on the east by the land of Modesta Pengson, formerly of her deceased father, Regino Pengson; on the south by land of Don Rafael C. de Ynchausti, formerly of Friar Alejandro Hernandez, who was the parochial curate of San Miguel; and on the west by the Sibul Estero.

2nd. That said property, according to the declaration for the purposes of taxation, is valued at $2000, Mexican Currency, equivalent to $900, U. S. Currency.

3rd. That according to his best knowledge and belief there does not exist any mortgage or lien upon the aforesaid property, nor any other person who may have real rights or legal participation or equities therein, either by virtue of possession or by relation of any kind whatsoever.

4th. That his principals obtained the ownership of said property by hereditary title and by virtue of the last will and testament of their predecessor in interest, the deceased Don Juan Roura, who in turn acquired the same by purchase from the original owner, named Jose Mercado, likewise deceased, according to a public document executed between the parties on March 24, 1885, which is hereto annexed.

5th. That said property is not occupied by anyone.

6th. That to the extent of his knowledge there are no persons occupying the bordering lands.

7th. That the names and addresses of the proprietors of the lands

bordering upon the property are, to the best of his knowledge, as follows:

Maria Roura, one of the petitioners, San Miguel de Mayumo, Province of Bulacan, P. I.

Modesta Pengson, lives at No. 246 Calle Diaz, District of Trozo or Tondo, of this City of Manila, P. I.

Rafael C. Ynchausti, post office address Ynchausti & Co., Manila, P. I.

8th. That my principals are both over the age of majority and married: Maria Roura, married to Ceferino de Leon; Juana Roura, married to Maximo Viola.

9th. That my name is Felix Ferrer y Pascual, 43 years of age, address No. 32 Pasaje de Norzagaray, Binondo, Manila, P. I.

Manila, September 19, 1904.

FELIX FERRER Y PASCUAL,
Attorney for the Petitioners.

List of Documents Annexed.

A. Certified copy of a deed of sale executed by Jose Mercado in favor of Juan Roura on March 24, 1885, to the same parcel of land.

B. Certificate issued by Petty Governor and the principal citizens of the pueblo of San Miguel de Mayumo on May 3, 1885, setting forth the right of quiet and peaceful possession of more than 30 years, which the original owner, Jose Mercado, exercised over the parcel of land which is the subject of the petition.

C. Certified copy of the will and testament of Juan Roura, in which the petitioners are declared his heirs.

D. Plan of the location of the land.

E. Technical description.

F. Certificate of assessment.

G. Power of attorney executed by the petitioners in favor of their representative.

FELIX FERRER Y PASCUAL,
Attorney for Petitioners.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Municipality of the City of Manila, September 19, 1904.

I certify that Felix Ferrar y Pascual, whose name is signed hereinabove, has appeared personally before me and that he is known to me to be the person who signed the foregoing petition, and he stated under oath that the contents thereof based upon knowledge which he has of the subject matter, is true, and that he believes to be true whatever it states as based upon his information. The party appearing exhibited his certificate of registration, No. 270,850, issued in Manila on June 13 of the present year.

JUAN M. PATERNO,
Notary Public.

My appointment expires the 1st of January, 1905.

6 *Annex A.*

EXHIBIT "B" OF PETITIONERS.

Public Notary's Office of Vicente Enriquez, Bulacan.

Certified copy of deed of absolute sale No. 18, executed by Jose M. Palomo in favor of Juan Roura. Year 1885. No. 18. In the Capital of the Province of Bulacan, and pueblo of the same name, on the 24th of March, 1885, before me, Don Vicente Enriquez, public scribe of the number and court of said province, and the witnesses who are named at the conclusion, appeared Jose Mercado y Palomo, native and resident of San Miguel de Mayumo, 61 years of age, married, farmer by trade, and after establishing his personality by producing on the spot his personal cedula issued by the Head man, Don Marcos Ramos, on the 19th of the present month, bearing No. 61, which cedula I return to the producer, and by means of the undersigned interpreter, he stated:

That he holds in ownership and possession two parcels of irrigated land, situate in Sibul, pueblo of San Miguel de Mayumo, the first of which has a sowing surface of four cavanes of rice, and is bounded on the north by the land of Regino Pengson; on the south by the land of Ambrosio Pengson; on the east by the land of Francisco de la Concha; and on the west by the land of Regino Pengson. And the second is two balitas, situate in the same place—Sibul—and bordering on the east the lands of Regino Pengson and those of the present parochial curate; on the west by lands of said parochial curate and the Sibul Tstero; on the south the lands of Regino Pengson; and on the north those of Ambrosio Pengson: and having a sale thereof absolutely contracted with Juan Roura for the
7 sum of 2800 pesos, he hereby, in the manner and form required by law, agrees: That he sells and gives in absolute sale in favor of said Juan Roura the aforesaid two parcels of land for the sum of 2800 pesos, which the vendor confesses to have received prior to this act, and since the delivery thereof is not in my presence, he renounces the reservation of uncounted money laws of its delivery, proof and payment, together with the two years which the laws assign for demand thereof, and the vendor declares that said sum of 2800 pesos is the just price and true value of said two parcels of land so sold, and if they should be worth something more, the excess, whether little or great, he makes in favor of the purchaser as a gift and donation pure, perfect and irrevocable, such as the law calls "intervivas;" with renunciation of the law which refers to contracts, in which there is a loss of more or less than the half of its just value, and he obligates himself by warranty of this sale. There is present in this act Juan Roura, native of Sanfeliu, Province of Barcelona, 50 years of age, widower, resident of San Miguel de Mayumo, and after establishing his personality by producing his personal cedula issued by the Administration of the Public Exchequer of this province on August 23rd, of the year last past, No. 4939, I return the same to the producer thereof. Notified of this deed he stated that he accepted the same in all of its parts to the fulfillment thereof both parties obligated themselves

with their persons and property, present and future, with the usual submission and renunciations. Thus they executed and signed the same before the attesting witnesses, Carlos Flores, Bibiano
8 San Pedro, and Macario Ramirez Pil, over the age of majority and residents of this capital, who affixed their signatures.

To all of which, as well as to the recognition of the parties, I certify.

JOSE MERCADO.
JUAN ROURA.

BIBIANO LO SAN SAN PEDRO.
CARLOS FLORES.
MACARIO RAMIREZ PIL.

As Interpreter, JUAN BERNABE.

VICENTE ENRIQUEZ.

The original copy appears at folios from the reverse of page 36 to the reverse of 38 of the current protocol of public instruments, from which I quote; and I issue at the request of the interested party the present, which I sign at Bulacan on the same day, month and year of its execution, on this stamped paper of the first class: to which I certify.

Interlined "the which" which stands.

VICENTE ENRIQUEZ.

9 *Annex B.*

EXHIBIT "C" OF THE PETITIONERS.

Don Potenciano Buencamino, acting petty governor of the pueblo of San Miguel de Mayumo, province of Bulacan, acting with ——— ———. I certify that on this date in this tribunal appeared Don Jose Mercado, over the age of majority, married, a resident of this pueblo, with personal cedula of the 9th class, No. 61, in register of the capital No. 86, and he manifested that he holds and possesses as his property in Sibul, barrio of Tartaro, of this pueblo, three parcels of irrigated land, two of which are rice lands and the other serves as a building lot and garden where he has his house erected. The last named is of one cavan of seed with a spring of water within it, and borders on the north upon lands of Ambrosio Pengson; on the east upon lands of Regino Pengson; on the south upon lands of his own and of the present parochial curate; on the west upon lands of said parochial curate and the Sibul Estero.

The second is of four cavanes of seed and borders on the north upon lands of Ambrosio Pengson; on the east upon lands of Eugenio Pengson and Francisco Maniguiz; on the south upon his own lands and those of Ambrosio Pengson and Dionicio de los Reyes; and on the west upon lands of Regino Pengson.

The third is of four cavanes of seed, with another part uncultivated, and borders on the north upon lands of Regino Pengson; on the east upon lands of Francisco de la Concha; on the south upon lands of Ambrosia Pengson; and on the west upon lands of said Regino Pengson.

Said parcels of land are found in his pacific possession for more than thirty years without interruption of any kind, and he asks that he be issued certificate of whether the matters above set forth are true or not.

The commune of leading citizens having been united and the petition of Mercado having been heard, they stated unanimously that what is set forth by the party appearing is certain and true; that said parcels of land had been cultivated and possessed for more than thirty years from this time, adding that the two first parcels, after publication by criers and citation of the adjacent owners, were measured and surveyed the 28th of February, last, by the deputy inspector of unreclaimed lands, Don Jose Moreno, with the aid of the assistant, Don Mariano Pineda, without any objection having been made either before, during the act, or after said measurement, the acting petty governor, the deputy of unreclaimed lands, and the assistant, together with the adjacent owners, Regino and Ambrosio Pengson, the present parochial curate, and the commune of leading citizens signing the note which was made of said measurement and survey.

And at the petition of said Don Jose Mercado, I issue the present in this town hall on May 3rd, one thousand eight hundred and eighty-five, to which we certify:

POTENCIANO BUENCAMINO.
MARIANO PENEDA.
ANTONIO TALLA DAVID.
CIRIACO TURON.
ESTANISLAO DE LA FUENTE.
EULALIO JUSTO.
WESCELASENEAS NADO.
DONATO ABELARDE JUSTO.
PALAGIO DE LEON.
AUGUSTIN GALITO.
JOSE MORENO.
MAURA JOSE.
OCTAVIO MARCEBRA.
JOSE SIOCONG.
11 PACELINO EVANGELISTA.
FELGENIO PAYANA.
FRANCISCO VILLARICA.
TEODORO GAMBTIM.
ROSIBIO DINIO.
SIMON GUJOVIE.
MANUEL CUENCA.
FELICIANO TECSON.
SEVERINO B. JOLIAN.
SUTERO CANUSA.
SEVERINO MARUG.
ISIDORO CRISTAL.
MANUEL CANOSA.
RUFINO MANGALINGAN.
MOMONTE AVIELDO.
MARIANO FULCANO.

12 *Annex C.*

EXHIBIT "D" OF THE PETITIONERS.

In the Pueblo of San Miguel de Mayumo, Province of Bulacan, P. I., September 16, 1904. Before the notary public of this province. Don Miguel Siojo, residing in this pueblo, appeared Doña Maria Roura, producing a public document of which she sought to obtain a certified copy, which public document is of the following tenor:

"No. 5. In San Isidro, capital of the province of Nueva Ecija, January 5th, of the year one thousand eight hundred eighty-five. Before me, acting notary of this province, Don Gabriel Espina Pasamonte, resident of the same town, appears Don Juan Roura y Ros, an insular Spaniard, widower, over the age of majority, land owner, resident of the pueblo of San Miguel de Mayumo, of the Province of Bulacan, and temporily resident in this province, with personal cedula of the sixth class, issued by the Administration of Public Exchequer of Bulacan, on July 31st, last, Numbered 523, which document he exhibits to me in this act, and after being verified by me I return the same to him who produced it, and I certify that I identify him and assure that he has what I consider the necessary legal capacity to execute this nuncupative will and testament, and he states that he is a native of Sanfeliu, province of Barcelona, now 51 full years of age, and the legitimate son of Don Francisco Roura and Doña Teresa Ros, both deceased in said province, and finding himself somewhat ill, but in his entire and sane judgment, he wishes to make declaration of his last will for the time when God may be pleased to call him. Wherefore, after commending his soul as an apostolic roman catholic, he orders his
13 testament in the form and clauses following:

1st. The funeral, interment and masses, the testator leaves to the disposition of his executor of the present will and testament, for which position he elects and names Don Donato Abelardo Justo, native and resident of San Miguel de Mayumo, of the province of Bulacan.

2nd. He bequeaths for once and all the sum of Two Pesos to one of the pious establishments.

3rd. He wishes that his body be dressed in black clothing and placed in a tomb, the funeral being celebrated in the presence of the corpse in the church of the parish where his death may occur; and that the interment be in a niche of the cemetery, and he assigns for these expenses the necessary sum, which he leaves to the discretion of his executor.

4th. He wishes that his funeral and interment be had without pomp of any kind, and assigns for the most indispensible expenses only the necessary sum.

5th. He leaves as alms for the distressed poor the sum of Twenty-five Pesos.

6th. He declares that in the wedlock by the first marriage, with Doña Maria Jaime, he has had two daughers, Doña Maria, now 20 years of age, and Doña Juana Roura, now 16 years of age; and in

the second marriage with Doña Silvina Jaime he has not had any offspring.

7th. He declares that while a widower he has had natural children by Maria Santamaria, of the pueblo of San Miguel de Mayumo, province of Bulacan, who are named Emilio, 13 years of age, Francisco, 9 years of age, and Emilia, 6 years of age, all of whom were baptized in San Miguel de Mayumo, jurisdiction of Bulacan, and not wishing to fail in that which his duty and conscience imposes upon him, since he gave them being, he recognizes them as his natural children.

8th. He declares that upon contracting marriage in first nuptial, with Doña Maria Jaime, each of them possessed P2000, in cash, and that when the death of his said spouse occurred the community property amounted to P12,000, inclusive of the aforesaid capital of P2000; but upon contracting marriage in second nuptials, with Doña Silvina Jaime, the latter contributed nothing and the testator of the present will was the only contributor.

9th. He declares that since the year 1870, in which his spouse Doña Maria Jaime died, the P12,000 mentioned in the eighth clause have increased and the total thereof will be seen in the inventory which he has made separately of all of his properties.

10th. In the exercise of the right which the law grants him he elects and names as guardian of the property of his two daughters, Maria and Juana Roura, the uncle of the latter, Don Tomas Jaime, resident of San Roque, Province of Cavite, and with respect to his three natural children, Emilio, Francisco and Emilia, he names as guardian and caretaker of the same the mother of the latter, Maria Santamaria, resident of San Miguel de Mayumo, and upon the default of the aforenamed guardians and caretakers, whether by reason of the marriage of the latter, or by deviating from the path of honor, he names as guardian and caretaker of all of his children, legitimate as well as natural, Don Marcelo Pelayo Bernardo, conferring upon them the faculties necessary in law, with waiver of bonds.

11th. He declares that he hereby constitutes as his sole universal heirs his two legitimate daughters, Doña Maria and Doña Juana Roura, with the right to receive in equal shares the four-fifths part of all of his properties, right and actions, and the one-fifth part remaining, likewise in equal shares, to his natural children Emilio, Francisco and Emilia Roura, upon the express condition that if the latter claim more than that which has been assigned to them by this clause, the said one-fifth part shall revert to the principal mass of his property.

12th. He declares that he owes nobody any sum.

13th. In the exercise of the right which the law grants him, he prohibits the judicial authority, or any other, from intervening in his estate, and although there may be interested in the inheritance minors, parties without capacity, and absent parties, he wishes that all be done privately.

14th. He declares that he does not recollect having executed previous to the present time any other will and testament, and if any should appear of prior date to the present will, he expressly re-

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vokes and annuls the same, since he wishes that this alone, which he now executes, should prevail as his last and deliberate will.

Thus he states, and he executes the same in the presence of witnesses called and requested by the testator, Don Francisco Gaspar, Marcos Ventus, Agapito Vallarta, Eulalio Ylagan, Ceferino Ortega, Urbano Lacona, Don Tomas Buenaventura, all residents of this town, and all having been notified of their right to read for themselves, or to have read, this document, by unanimous accord,
16 I have read it in full aloud, and after having done so the executing party ratified the same and all came to sign.

To all of which I certify.

JUAN ROURA.

FRANCISCO GASPAR.
MARCOS VENTUS.
CEFERINO ORTEGA.
AGAPITO VALLARTA.
EULALIO YLAGAN.
TOMAS S. BUENAVENTURA.
URBANO LACONA.

Then follows the sign Gabriel Espina.

This is the first copy of its matrix, at the execution of which I have been present, and which appears in my public protocol of the current year, under the number indicated at the beginning, at folios at the reverse of folio 10 to folio 15 inclusive, and at the instance of the interested party I issue this in five pages of Catalan paper, to the first page of which are attached twenty stamps of one peso, and to the third and fifth two stamps each one of one real. On account of the lack of stamped paper of the first and tenth class, on which the same should be set forth, and this copy I mark, sign and thereon place my rubric at San Isidro, on the date of its execution, annotating this issue on the margin of its matrix.

To all of which I certify.

Marked and signed Gabriel Espina."

I certify that the contents of the preceding document was taken literally and wholly from its original copy, which the party appearing, Doña Maria Roura, has exhibited to me. And at the instance of the interested party I issue the present copy, which I sign
17 with the seal of this office on the date above mentioned.

[NOTARIAL SEAL.] MIGUEL SIOJO,
Notary Public.

Expires on the 1st of January, 1905.

(Here follows diagram marked page 18.)

19 *Annex E.*

Technical Description.

The undersigned licensed surveyer having proceeded at the instance of the interested parties with the measurement and draft of the plan of a parcel of land with the spring of mineral medicinal sulphurous and iron waters, called Sibul Spring, situate in the barrio of the same name, in the municipality of San Miguel de Mayumo, Province of Bulacan, property of the sisters Doña Maria and Juana Roura, he obtained therefrom the following result with the aid of a pantometer and a metal tape:

Commencing at a point marked "X" on the plan, which point is the mineral medicinal spring of sulphurous waters, known by the name of Sibul Spring, where the instrument was located, and from this point course was taken to point "A" S. 21° 15′ E., a distance of 22 meters; thence course was taken to point "B" N. 69° 0′ W., a distance of 25.12 meters; thence course was taken to point "C" S. 65° 40′ W., a distance of 9.60 meters; thence course was taken to point "D" N. 60° 20′ W., to a distance of 17.90 meters; thence course was taken to point "E" N. 6° 20′ W., a distance of 19.00 meters; thence course was taken to point "F" N. 50° 40′ E., a distance of 11.19 meters; thence course was taken to point "G" N. 89° 00′ E., a distance of 76.80 meters; thence course was taken to point "H" S. 18° 00′ W., a distance of 33.47 meters; thence course was taken to point "A" S. 68° 15′ W., a distance of 27.10 meters, thereby closing the polygon: including a superficial area of 2776.87 square meters.

All of the points named are marked on the plan, and the
20 courses followed are magnetic.

Boundaries. On the front of its entrance, or towards the south, by the property of Don Rafael de Ynchausti, and by part of the watercourse which flows from the spring. On the right entering, or on the east, by the property of Modesta Pengson; on the left entering, or toward the west, by the same watercourse; and in the back, or toward the north, by the property of Maria Roura.

Manila, September 12, 1904.

PEDRO LOPEZ.
Licensed O. P., 96 Paseo Azcarraga.

21 *Annex F.*

Exhibit "E" of the Petitioners.

Municipal Government of San Miguel, Province of Bulacan, P. I.

I Segundo Sempio, Municipal Secretary of the Municipality of San Miguel de Mayumo, Province of Bulacan, P. I., hereby certify that according to the records which exist in this municipal secretary, there appears a declaration of property, presented by Doña Maria

Roura, resident of this pueblo at the present time, which is of the following tenor:

"Provincial form 2. Declaration of land owner. I, Maria Roura, in my own name, and in that of my sister, Juana Roura, of San Miguel de Mayumo, Bulacan, hereby certify that I am the owner, with my said sister, in undivided parts, of the real estate situate in the Barrio of Sibul, Municipality of San Miguel de Mayumo, having a superficial area of 2776.87 square meters, more or less, and whose boundaries and description are as follows:

Land. A building lot bordering on the north upon the lot of the declaring party, Maria Roura; on the east upon property of Modesto Pengson; on the south upon property of Messrs. Ynchausti & Brothers; and on the west upon the Sibul Estero.

Improvements. It has no improvements.

And that the true and just value of said real estate is P2000; and that the title of ownership of said real estate appears in the following documents: A public deed executed on March 24, 1885, in favor of our father, Juan Roura, now deceased.

22 I cause it to appear furthermore that this sworn statement for such purposes has not been presented until now for the reason that the paper has been mislaid and was only found a little while since.

(Signed) MARIA ROURA.

Subscribed and sworn to before me the 15th day of September, 1904.

(Signed) SEGUNDO SEMPIO,
Municipal Secretary.

There is a seal—"Office of the Municipal Secretary, San Miguel, Bulacan, P. I."

And at the instance of the interested party, Doña Maria Roura, for the purposes which may be agreeable to her, I issue the present, to which correctness I certify in the Municipality of San Miguel de Mayumo, on September 16, 1904. Office of the Municipal Secretary San Miguel, Bulacan, P. I.

SEGUNDO SEMPIO,
Municipal Secretary.

23 *Annex G.*

Know all men by these presents, that we, Maria Roura, dedicated to occupations proper to my sex, over the age of majority, married, resident of the pueblo of San Miguel de Mayumo, Bulacan, P. I., and temporarily in this city, and Juana Roura, dedicated to occupations proper to my sex, over the age of majority, married, and resident in this city, freely and voluntarily agree:

That we confer ample power, such as may be required in law, in favor of the attorney, Don Felix Ferrer y Pascual, domiciled in this city, that in our name and representing us, he may institute before

the Court of Land Registration the proper proceedings for the inscription of a parcel of land belonging to us, situated within the jurisdiction of the municipality of San Miguel de Mayumo, Province of Bulacan, P. I., and may appeal to the higher court, if necessary, and may execute all of the acts and proceedings necessary for obtaining the inscription sought.

Manila, September 1, 1904.

MARIA ROURA.
JUANA ROURA.

Signed in the presence of:
SIMPLICIO BELTRAN.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

SEPTEMBER 1, 1904.

In said City there appeared personally Doña Maria Roura and Doña Juana Roura, whom I certify that I know to be the persons who signed the above document, and they ratified this as an act
24 of their free will and execution. They did not exhibit to me their certificates of registration because they stated to me that they did not have such by reason of their sex.

Before me,

AMBROSIO SANTOS,
Notary Public.

[SEAL.]

My appointment expires the 1st of January, 1905.

25 That on the 29th day of November, 1904, the Solicitor General of the Philippine Islands, on behalf of the Insular Government, presented and filed an opposition to said petition in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

In Proceeding No. 1011.

MARIA ROURA and JUANA ROURA, Petitioners.
vs.
INSULAR GOVERNMENT et als., Opponents.

The Solicitor General, on behalf of the Insular Government, appears before the Court and alleges: That Maria and Juana Roura, in accordance with the Land Registration Act, petitioned for the registration of the property of which they allege themselves to be absolute owners, and whose description is the following:

"A parcel of land suitable for building purposes, situated in the Barrio of Sibul, of the Municipality of San Miguel de Mayumo,

Province of Bulacan, P. I., and whose superficial area and boundaries are the following:

The area measures 2776.87 square meters, and borders on the north, in part upon the property of one of the petitioners, Maria Roura; on the east upon the land of Modesta Pengson, formerly of her deceased father, Regino Pengson; on the south upon the land of Don Rafael C. de Ynchausti, formerly of Friar Alejandro Fernandez, who was parochial curate of San Miguel and on the west upon the Sibul Estero."

Said land is not the property of the petitioners, but is of the public domain, and therefore under the control of the Insular
26 Government.

Wherefore, the registration sought is opposed and the court is asked to deny the same with costs taxed against the petitioners.

Manila, November 28, 1904.

GREGORIO ARANETA,
Solicitor General.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

NOVEMBER 29, 1904.

I certify that Gregorio Araneta, above named, appeared before me, and known to me to be the person who signed the foregoing petition, he stated under oath that whatever is therein stated upon his knowledge of the subject matter is true, and that he believes to be true what is therein declared upon the nformation *with* the opponent possesses. And he exhibited to me his certificate of registration No. 257,829, issued in Manila on the 21st of May, 1904.

JOSE MORENO LACALLE,
Assistant Clerk of the Court of Land Registration of the Philippine Islands, Ex-Officio Notary Public.

That thereupon, to-wit: On the 15th day of December, 1904, the said petition was called for hearing at a session held by said Court of Land Registration, Honorable S. Del Rosario presiding, at San Miguel de Mayumo, province of Bulacan. Whereupon the following proceedings were had:

Attorney Felix Ferrer appeared on behalf of the petitioners.

Doña Modesta Pengson, accompanied by her spouse, Don
27 Juan Bautista Deju, as opponent.

The COURT: "Is there anyone else who is opposed to the claim of the petitioners in this proceeding?

No one offers himself.

J. B. Deju states, in the name of his spouse, that the latter considers herself owner, inasmuch as she possesses a title deed issued by the Spanish Government.

The COURT: Formulate your opposition.

The COURT: Is there anyone else who seeks to oppose the petition of Maria and Juana Roura?

No one offers himself.

The COURT: The representative of the Insular Government has expressed to me a wish that the hearing be continued at 9 o'clock tomorrow, for the reason that he has not sufficient time to appear today. In accordance with this wish the hearing is set for tomorrow at 9 o'clock A. M., and Bautista Deju is notified to formulate the opposition which he announced against the petition of Maria and Juana Roura, in order to present the same at that hour.

After some minutes Sr. Avanceña arrived.

The COURT: Now that Sr. Avanceña is here, coming on behalf of the Solicitor General, we can proceed with the hearing of proceeding 1011 set for 9 o'clock tomorrow. The Court stated that it would hear attorney Ferrer.

Sr. FERRER: I am going to present in the first place, to support the petition of my principals, an official copy taken from the state offices, and I am going to designate it as Exhibit H.

The COURT: Be good enough to hand it to the representa-
28 tive of the Attorney General, in order that he may state if he has any objection.

Sr. AVANCEÑA: Counsel may continue offering the title deed.

Sr. FERRER: I present title deed marked H, and title deed of the second parcel, as exhibit I, issued by the General Directorate of Civil Administration, which said second parcel constitutes the land which is the subject of this proceeding.

I also offer, marked letter "J" the plan which covers this second parcel, measured on February 28, 1885, by the Deputy of Unreclaimed Lands.

The COURT: Let them be handed to Sr. Avanceña.

Sr. AVANCEÑA: At first glance I have no objection, reserving the right to impugn the same.

The COURT: You always have that right.

The COURT: Sr. Bautista, will he examine that also?

Sr. BAUTISTA: No sir, I have no objections.

The COURT: Those documents marked with the letters which have been indicated by Sr. Ferrer, who has offered them, are admitted.

Sr. FERRER: Concerning the plan, I should call attention to the fact that the land situated in the northern part is not included in this petition. I make this exception for purposes which may follow. As it has not been possible for us to offer the certificate at the present time, I present the sworn statement of two residents of San Miguel, each one marked with the letter "K."

The COURT: It is admitted, marked letter "K."

Sr. FERRER: I am going to present also a sworn statement marked with the letter "L," made by the mother of the three
29 brothers, since, according to the report of the examiner of titles, the partition among them has not been made.

Likewise I offer for the purposes which may follow another sworn statement of Francisco Roura, marked with the letter "N," showing the partition to have been duly made.

These are the only documentary proofs which I offer, and I need not offer witnesses.

Sr. AVANCEÑA: I believe that these witnesses should be offered in order that the opponents may have an opportunity to crossexamine them.

Sr. FERRER: We have no objection.

The COURT: In accordance with the statements of the representative of the Solicitor General, in the name of the government, it is ordered that the parties who subscribed the documents offered by Sr. Ferrer be examined forthwith.

Testimony of Maria Santamaria.

The witness was sworn in legal form. Her personal description is as follows: 40 years of age, widow, resides in the Barrio of San Jose, San Miguel de Mayumo, Province of Bulacan. Document marked with the letter L is offered to the witness in order that she can confirm and ratify the same.

The COURT: It will be better, Sr. Ferrer, for you to formulate questions.

Sr. AVANCEÑA: Having read this document, I waive the testimony.

The COURT: In view of the statement of Sr. Avenceña the testimony of Maria Santamaria and Francisco Roura are unnecessary.

Sr. AVANCEÑA: I offer a copy certified by the Chief of the Bureau of Archives, of various documents in which it appears that the grant made by the government in favor of Jose Mercado on October 19, 1885, of the land whose registration is now sought has been annulled by the general government in a decree dated March 5, 1885, and that for that purpose Jose Mercado has been requested to return the title deed issued by the general directorate of civil administration, his wife having stated that Juan Roura held the title deed. The title deed to which the documents I offer refer is the same which the petitioners have offered here.

Sr. FERRER: I accept these documents.

Sr. BAUTISTA: I accept likewise.

The COURT: The document which the representative of the Insular Government offers as proof of the right which he claims is admitted, marked as No. 1.

Sr. FERRER: I offer as evidence in rebuttal the report of the Council of Administration referring to the arbitrary action of the general administration, which, after having issued the title, annulled it. The Court will have time to study closely this report in which the annullment of a title that the same government has granted to a private party is reported (he reads the document) in these terms. This council has expressed itself disapproving all that the government had done to annul that title, to which the attorney general refers, and I ask that it be marked as evidence in rebuttal with the letter "N."

Sr. Ferrer closes his evidence.

Sr. AVANCEÑA: I object to the admission of this document as evi-

dence in rebuttal since it has no legal effect. It is one of the
31 documents which I have offered. It is a report directed to the same general government to the effect that it should reconsider its determination but it has not the legal effect of annulling the decree of the general government.

The COURT: Let it be admitted for the purposes for which Sr. Ferrer offered it.

Sr. AVANCEÑA: The decree of the Minister of Foreign Colonies, which has been published in the Gazette of Manila on October 29, 1885, at page 1237, should be taken into account for the reason that it refers to the resolution of the general government.

The COURT: Be good enough to hand it to Sr. Ferrer.

Sr. FERRER: I will save the time of the representative of the Attorney General by offering to him an official copy which I have no objection to.

Sr. Avanceña reads.

The COURT: Which of the two documents do you desire to *ovver*, Sr. Avanceña?

Sr. AVANCEÑA: The copy.

The Court admitted the same marked No. 2.

Sr. BAUTISTA: I object to the admission of the report and opinion of the council of administration.

Sr. AVANCEÑA: Excepts to the order of the Court admitting the evidence of rebuttal offered by Sr. Ferrer, consisting of this report of the Council of Administration.

Sr. BAUTISTA: I object to the evidence of rebuttal offered by Sr. Ferrer, marked with the letter "N."

The COURT: The admission of the document has been decided.

Sr. BAUTISTA: I except.

32 The Court offers to hear the oral argument of Sr. Ferrer.

Sr. Ferrer stated that he sought the Court of Land Registration to obtain title deed to the parcel of land which is the subject of the proceeding. The right which his principals invoked was derived from the right of the original owner, Don Jose Mercado, who acquired the same by virtue of the grant made by the Council of Civil Administration for a stipulated sum, in exchange for the parcel of land. The deceased, Juan Roura, father of the petitioners, acquired possession of this land by virtue of a deed of sale executed by Don Jose Mercado in his favor, and from him the petitioners inherited the same. After some time had elapsed the general government annulled that title by grant without returning the money consideration for the land, and without previously hearing the defenses which the aggrieved owner might set up, when, as a matter of fact, this matter ought to have been heard before the competent court. This is not legal; it is an embezzlement, since it can not be conceived that after the possession of this real estate had been lawfully granted and the cost thereof had been paid to the satisfaction of both parties, as is witnessed by the documents in evidence, all of the transaction should be afterward retroactively annulled.

These points having been explained he requested the registration of the property in the name of his clients.

The right to be heard having been extended to Sr. Avenceña, the latter stated that the question was already determined according to the documents which he had offered to the Court; for, al-
33 though the General Directorate of Civil Administration granted title of composition of the land, a year later, when informed of the error of the general government, it then annulled the said title on account of the intrigues and schemes of the surveyor. I ought to call attention to the fact that although the report of the Council of Administration was prior in date, that decree of the Minister of Foreign Colonies corroborates the decree of the general government so that the former has not the legal effect of annulling the last named.

The COURT: The opposition filed by Sr. Bautista, the husband of Doña Modesta Pengson, will be heard in Manila because the documents have not yet been prepared nor produced. For the further hearing 9 o'clock of the 24th day of December was fixed.

After the hearing of the evidence of one of the opponents the Court will determine the proceeding.

Session was adjourned at 11:45 A. M.

I certify that the foregoing is a copy of the transcription of the stenographic notes taken by the undersigned in the present trial.

R. T. FERNANDEZ.

That, thereafter, to-wit: Prior to the decision of said matter by the Court of Land Registration, as hereinafter appears, the opposition of Doña Modesta Pengson, and of her spouse, Sr. Bautista, was wholly withdrawn, as more fully appears from the decision of said Court hereinafter set forth.

The exhibits mentioned as offered and admitted at the hearing hereinabove referred to, which have not heretofore been set forth in this record as annexes to the petition are as follows:

34 EXHIBIT "H" OF THE PETITIONERS.

There is a stamp on the margin which says: General Directorate of Civil Administration of the Philippines. Composition of royal unreclaimed lands. No. 7284.

There is a seal which says: General Administration of the Exchequer, book 2 No. 4, folio 166, September 10, 1885, noted.

There is another seal which says: General Administration of Rents, and (illegible) book 2, 5, folio 177, September 12 (illegible) No. 7. Noted.

Most Illustrious Sir: By decree of this Directorate, and under date of today, there has been granted to Don Jose Mercado, resident of San Miguel de Mayumo, Province of Bulacan, the composition with the state of some lands which he possesses in the Barrio of Sibul, in the jurisdiction of the aforesaid pueblo and province, in accordance with the provisions of Article 5 of the Regulations for composition of June 25, 1880, and the interested party should pay at the place fixed by your department the sum of Pesos 2.31, which represent ten per cent of the assessment of the land, for the expenses of sur-

vey and measurement made by a deputy of unreclaimed lands, and the fees for the title deed, according to the provisions of the decree of the general government of these islands of September 12, 1882, approved by Royal Order of July 25, 1884, the deposit of which sum he will prove by the presentation of the corresponding receipt. All of which I communicate to you in compliance with article 14 of the aforesaid regulations. God guard you for many years.

Manila, September 7, 188–.

P. O.—JOSE CENTENO. [RUBRIC.]

35 In the margin there is another rubric.

To the Most Illustrious General Administration of the Exchequer of the Philippine Islands ——.

To the Administrator General: The sum which Jose Mercado should deposit in the treasury for the composition with the state of the land to which this proceeding refers having been liquidated, it is proper, in the judgment of him who has the honor to sign hereinafter, that a copy should be remitted to the Administration of the Public Exchequer, Bulacan, in order that the latter may make collection of the sum expressed therein, remitting in due course to this central office the letter of payments which evidences the deposit, and the page of stamped paper of the third class for the drawing up of the corresponding title deed as is provided in Royal Order No. 1137 of October 22, of the year last past, and the circular of this central office of December 19, 1883. The undersigned also believes that a copy of the aforesaid liquidation should be sent to the Department of Intervention of this central bureau in order to fulfill there the purposes of bookkeeping. Your honor will determine. Manila September 18, 1885. P. S. Marcelino Viejo, rubric—agreed—rubric—there is a stamp which says: Central Administration of Rents and Properties—2nd—5th—177/7—estimate of desposits 1884 to 1885, section 5th, chapter 2, article one. Liquidation which this Intervention Department makes of the sum which Don Jose Mercado, resident of the pueblo of San Miguel de Mayumo, of said province, should deposit in the Administration of Public Exchequer of the Province of Bulacan for legal fees for the gratuitous composition with the state of certain lands which he possesses

36 in the barrio of Sibul, jurisdiction of said town and province.

This liquidation is made in view of the foregoing communication of the General Directorate of Civil Administration, and by virtue of what is provided by the Central Administrator in his foregoing decree, for 10 per cent of the assessment of said lands which have been surveyed and measured by the deputy of Unreclaimed Lands as is prescribed in the decree of the general government of September 12, 1882.

	Pesos.	Cents.
	2	31
Total	2	31

This liquidation amounts to the sum of two pesos and thirty-one cents. Manila, September 18, 1885. I made this liquidation. The Chief of Division. Marcelino Vieje—rubric—Examined and found correct. Intervenor—Florentino Montojo. O. K. The Central Administrator, A. Santistoban—rubric. In the margin there is a seal which says "Factory of Stamps No. 1." Upon the same is found the following: There has been presented the personal cedula of the interested party, No. 26 of the 9th class, issued by the head man and Petty Governor of San Miguel de Mayumo, Province of Bulacan, August 25 last past. Manila, 21st September, 1885. P. O. G. Francisco—rubric. There is in the same margin the following: September 21st. Granted as prayed for, and for the fulfillment communicate with the General Treasury in order that the deposit which is sought may be received as remittance of the Administration of Bulacan, to which will be remitted the corresponding receipt for its formalization. Give notice to the interested party. A. Santistoban—rubric.

There is a seal which says: Seal—3rd as entry 1884 and 1885—250/1000 of Peso N. O.—785.695.

37 There is another seal which says: (illegible) (illegible) properties (illegible) (illegible) 1885—noted.

To the Central Administrator of Rents and Properties, Don Alejo Javier, resident of the pueblo of San Miguel de Mayumo, Province of Bulacan, with personal cedula of the 9th class, No. 26, issued by the head man or Petty Governor of the said pueblo on August 25th last, to your honor in the name of Don Jose Mercado—respectfully states: That by a decree of the Civil Directorate the composition of a parcel of land in the said pueblo has been granted this principal, and desiring to make the payment of the fees for the same in this city, he craves of your honor to be good enough to order that said payment be received in the General Treasury, issuing therefor the necessary orders, a favor which he hopes to merit from the rectitude of your honor whose life may God guard many years. Manila, September 19, 1885. Alejo Javier—rubric. To the General Treasurer of Exchequer. Manila, September 23, 1885. The General Directorate of Civil Administration has granted to Jose Mercado by composition with the state certain lands which he possesses in the barrio of Sibul, in the jurisdiction of the pueblo of San Miguel de Mayumo, of the province of Bulacan, upon the payment of pesos 2.31, based upon the value of the assessment of the land which has been surveyed and measured by a deputy of unreclaimed lands, and the interested party having petitioned, in a request dated the 19th of the present month, that he be permitted to pay said sum into the general treasury of this city, I have the pleasure of letting your honor know, in order that you be good enough to dispose of the deposit

38 as a remittance of funds received from the aforesaid subagency, to which should be remitted the receipt for its formalization, notifying your honor that the payment should take place within the period of three days. As soon as this deposit is made I beg that you would be good enough to communicate the fact to this Central Office, without prejudice to that other formality, and in order

to give the proceeding due course in order that the issuance of the title shall not meet with any delay. God guard you, etc.

There is in the margin a stamp which says: General Treasury Philippines, 2d—5th—177/7.

There is a seal which says: The Central Administration of Rents and Properties (illegible) 2d—5th—(illegible) 177: September 28, 1885, No. 7, noted.

In answer to your kind communication of the 23rd of the present month, I have the pleasure to state to your honor that under charge note 651, and receipt dated today, Jose Mercado has deposited in the Treasury the sum of pesos 2.31, the amount based upon the value of the assessment of certain lands in the Barrio of Sibul, jurisdiction of the pueblo of San Miguel de Mayumo, Province of Bulacan. God guard you many years. Manila, September 28, 1885. Matias los (illegible) rubric.

To the Central Administrator of Rents and Properties:

There is in the margin a stamp which says: Central Administration of Rents and Properties of the Philippines.

Illustrious Sir: The General Treasurer of the Exchequer in a communication dated the 28th of the present month, states to this Central Office that under debit note No. 651, Don Alejo Javier, representing Don Jose Mercado, has deposited in that treasury
39 the sum of pesos 2.31, the equivalent of 10 per cent of the assessment of the land of which this proceeding treats. In consequence thereof, and in view of the fact that by the aforesaid communication, the deposit in the treasury of the aforementioned sum is sufficiently evidenced, and of the fact that furthermore, the interested party has produced in this Central Office the page of stamped paper of the third class for drawing up the corresponding title deed, it seems to the official who has the honor to subscribe hereto that the said page of paper and a certified copy of the aforesaid communication should be remitted to the General Directorate of Civil Administration, requesting the issuance of the corresponding title deed, as is provided in Article 9 of the Regulations for the Composition of Royal Lands, approved by Royal Decree of the 25th of 1880, without prejudice to the remittance in due time of the receipt resulting from the making of said deposit, debiting the section, chapter and article of the prevailing estimate, which receipt will have to be issued by the Administration of Public Exchequer of Bulacan, to which should have been remitted by the Central Treasury the receipt issued by the latter. Your honor will determine. Manila, 28 September, 1885. Marcelino Viejo—rubric. Agreed, Francisco A. Santisteban—rubric.

There is in the margin a note which says September 29th. Agreed (illegible) rubric.

Let it appear that on this date there has been remitted to the Civil Directorate a certified copy of the communication of the General Treasury and a page of stamped paper of the third class. Manila, September 3, 1885. M. Viejo—rubric.

40 There is a stamp which says: Administration of the Public Exchequer of Bulacan, lands of the State—No. 59—

corresponding to debit note No. 59—budget of 1884-85—section 5th, chapter 2, article 1. Don Manuel Aliacar Zumeta, Administrator of the Public Exchequer of the Province of Bulacan.

I have received the sum of two pesos and thirty-one cents which Don Jose Mercado has deposited virtually in this treasury as the amount based upon the value of the assessment of a parcel of land in the Barrio of Sibul, of the pueblo of San Miguel de Mayumo, which sum has been deposited in the General Treasury as a remittance from this Administration by virtue of receipt No. 5 issued by said Central Office on the 28th of September, last past, annexed to certificate No. 14 of this date: In gold ——; in silver ——; in ——; in ——; Total pesos 2.31; and of this receipt note must be taken by this department of intervention, without which requisite it will be null and of no value nor effect. Bulacan, October 12, 1885. Manuel Aliacar—rubric. I have taken note The Intervenor, Carlos Sy Ramirez—rubric. Entered in the Department of Intervention at No. 59 of the day book—rubric. Entered in the Treasury No. 59—rubric.

There is in the margin a stamp in handwriting which says: Administration of the Public Exchequer of Bulacan—No. 59.

There is in the same margin the following: October 20th. Received together with the receipt of a page of stamped paper of the third class above mentioned. Let receipt be acknowledged and account be given to the General Administration of the remittance to the Directorate of Civil Administration for the drawing up of the corresponding title deed. A. Santisteban rubric. Sr. F. Palu.

41 There is a seal which says: Central Administration of Rents and Properties, book 2, 5th, folio 177, October 22, 1885, No. 7, entered. I have the honor to remit to your honor the receipt No. 59 of the 12th of the present month, by which is certified that Don Jose Mercado has deposited virtually in the treasury of this administration the sum of pesos 2.31, to which amounts the sum corresponding to the assessment of the land in the Barrio of Sibul, of the pueblo of San Miguel de Mayumo, of this province, together with a page of stamped paper of the 3rd class for the drawing up of the corresponding title of ownership. Be good enough to order that the due receipt be acknowledged to me. God guard your honor many years. Bulacan, October 17, 1885. Manuel Aliacar, rubric. To the Central Administrator of Rents and Properties.

Department of the Interior, Bureau of Public Lands, Manila.

I certify that that which is set forth in the six preceding pages is a true and literal copy of the original record referring to the composition of lands in the Barrio of Sibul, jurisdiction of the pueblo of San Miguel de Mayumo, Province of Bulacan, recommended to Don Jose Mercado by decree of the General Directorate of Civil Administration on September 7, 1885. The interlineations "lu" and "re" found in the first line of page 2 and between lines 21 and 22 of page 3, respectively, are valid. In order that it may so appear, at the petition of Attorney Felix Ferrer, I issue the present copy, which I sign at Manila, October 26, 1904. Will M. Tipton, Chief of the Bureau of Public Lands.

42 EXHIBIT "I" OF THE PETITIONERS.

Lands of the State: Administration of Public Exchequer of Bulacan, No. 59, corresponding to debit note No. 59, budget of 1884-5, section 5th, chapter 2, article 1. Don Manuel Aliacar y Zumeta, Administrator of the Public Exchequer of the Province of Bulacan: I have received the sum of two pesos and thirty-one cents which Jose Mercado deposits virtually in this treasury as the amount based upon the value of the assessment of a parcel of land in the Barrio of Sibul of the Pueblo of San Miguel de Mayumo, which sum has been deposited in the General Treasury as a remittance of this administration by virtue of receipt No. 5, issued by said Central Office on September 28th, annexed to certificate No. 14 of this date, and of this receipt note must be taken by this Department of Intervention, without which requisite it will be null and of no force nor effect. Bulacan, October 12, 1885. M. Aleacar. in gold ——; In silver ——; In ——; In ——; Total pesos 2.31. I have taken note. The Intervenor, Carlos Sy Ramirez. This is a copy. Sy Ramirez.

Entered in the Department of Intervention at No. —— Entered in the Treasury.

43 *Exhibit "I" Continued.*

The Director General of Civil Administration of these Islands, No. 1330. Whereas Don Jose Mercado has petitioned for the composition with the State of two parcels of land which he possesses in the limits of the Pueblo of San Miguel de Mayumo, Province of Bulacan, and whose location, area and boundaries are the following:

The first is located in the Sitio of Sibul, Barrio of Sibul, contains an area of 1 hectare 98 areas and 32 centiareas, and borders to the north upon the lands of Ambrosio and Lucio Pengson; to the east upon the lands of Eugenio Pengson and Francisco Maniquis; to the south upon the lands of Dionicio de los Reyes, Ambrosio Pengson and the property of the interested party himself; and to the west upon lands of Regino Pengson.

And the second is situated like the former and measures an area of 32 areas and 27 centiareas, and its boundaries are: to the north the estero of Sibul and lands of Ambrosio Pengson; to the east lands of Regino Pengson; to the south lands of Friar Alejandro Hernandez and Regino Pengson; and to the west the estero of Sibul and lands of Friar Alejandro Hernandez.

And as, by decree of this General Directorate dated September 7, 1885, the ownership of said lands has been awarded gratuitously to the interested party in accordance with the prevailing provisions of law, the sum of pesos 2.31 for the corresponding legal fees being paid to the State, the deposit thereof having been made, I issue the present title deed in order that by virtue of the same Don Jose Mercado may be had and held as the legitimate owner of the

44 aforesaid parcels of land.

Of this title deed note will be taken in the General In-

spection of Unreclaimed Lands and the same shall be presented afterwards to the Chief of the Province for its inscription in the registered ordered opened by Circular of December 6, 1881, and in order that the composition, which hereby by the present title deed becomes legalized, may be published and ratified by notices posted and public criers. Given at Manila, October 19, 1885.

V. BARRANTES.

There is a seal which says: General Directorate of Civil Administration, Philippines. The Inspector General of Unreclaimed Lands, J. Aeinz de Baranda.

There is a stamp which says: Board of Engineers of Unreclaimed Lands, Philippines. Title of ownership of two parcels of land included in the Barrio of Sibul, Jurisdiction of the Pueblo of San Miguel de Mayumo, Province of Bulacan; issued in favor of Don Jose Mercado in accordance with prescriptions of Royal Decree of June 25, 1880. Note was taken of this title deed, No. 1330, in this General Inspection of Unreclaimed Lands, Manila, October 20, 1885. J. S. de Baranda.

There is a stamp which says: Board of Engineers of Unreclaimed Lands, Philippines.

Mayoralty of Bulacan, October 21, 1885. Let the foregoing title be inscribed in the corresponding book and when accomplished, deliver the same to the interested party for publication and ratification of the composition thereof by notices and public criers, by presenting it for the purpose to the Petty Governor of San Miguel de Mayumo.

(Signed) ALIACAR.

There is a stamp which says: Mayoralty of the Province
45 of Bulacan. It is hereby certified that on the same day, October 21, 1885, the foregoing title was registered at the reverse of folio 69 of the corresponding book, it having been later returned to the interested party for the purposes set forth in the foregoing decree. To all of which I certify.

RAMON YCARIA.

Tribunal of San Miguel, October 22, 1885. There having been presented the title of composition issued by the General Directorate of Civil Administration in favor of Don Jose Mercado for two parcels of land at the site of Sibul, of which the first measures in superficial area, 1 hectare 98 areas and 32 centiareas, and borders to the north upon the lands of Ambrosio and Lucio Pengson; to the east upon the lands of Eugenio Pengson and Francisco Maniquiz; to the south upon the lands of Dionicio de los Reyes and Ambrosio Pengson and the lot of the interested party himself; and to the west upon the lands of Regino Pengson; and the second parcel is situated like the former and measures a superficial area of 32 areas and 27 centiareas, and its boundaries are: to the north the Sibul Estero and lands of Ambrosio Pengson; to the east lands of Regino Pengson; to the south lands of Friar Alejandro Hernandez

and Regino Pengson; and to the west the Sibul Estero and lands of Friar Alejandro Hernandez. Let the request be granted of the interested party, Jose Mercado, and the notices and public crying be proceeded with in order that thereby composition of the said lands be published and ratified in accordance with said title deed; and for this purpose post the notices in the public and opportune places in the Tagalog language, and publish the bans for three consecutive nights; and all this being done, deliver the record
46 to the interested party for the corresponding purposes.

Thus orders and signs the First Lieutenant acting in the exercise of the powers of Petty Governor on account of the latter's occupation in other affairs of the public service. To which we certify.

CIRIACO TECSON.

MARIANO JULIANO.
LIMBANO BALTASAR.

We certify that on the nights of the 22nd, 23rd and 24th of the current month were published the opportune bans as is ordered in the foregoing order. We note the same today, October 26, 1885. To all of which we certify.

MARIANO JULIANO.
LIMBANO BALTASAR.

We certify that today, October 31, 1885, Don Juan Roura exhibited on this date the personal cedula of the 9th class second group of Don Jose Mercado, Nos. 102 and 534967, issued by the head man No. 36 of this pueblo on September 26th last. To all of which we certify.

MARIANO JULIANO.
LIMBANO BALTASAR.

We certify that today the 31st of October, 1885, there were posted in the public and usual places the notices ordered by the foregoing order, and a copy was sent to the Lieutenant of Sibul for its publication at that place. To all of which we certify.

JOSE MANIQUIZ.
MARIANO JULIANO.
LIMBANO BALTASAR.

(Here follows diagram marked page 47.)

CHARTS

TOO LARGE FOR FILMING

48 EXHIBIT "K" OF THE PETITIONERS.

Affidavit.

We, Miguel Santos and Cirilo B. Santos, over the age of majority, residents and property owners of San Miguel de Mayumo, Province of Bulacan, P. I., and temporarily in this City of Manila, declare and certify: That we know the land belonging to the sisters Doña Maria and Doña Juana Roura, situated in Sibul, of the Municipality of San Miguel de Mayumo, Province of Bulacan, P. I., which has a superficial area of 2776.87 square meters, bounded on the north by land of Maria Roura; on the east by land of Modesta Pengson; on the south by land of Rafael Ynchausti; and on the west by the Sibul Estero, and that its actual value, according to their best knowledge and belief is $2000, Mexican Currency, equal to $900, gold.

In witness whereof we sign at Manila this 8th day of November, 1904.

MIGUEL SANTOS VIOLA.
CIRILO B. SANTOS.

Signed in the presence of
Y. P. LENTERIO.

UNITED STATES OF AMERICA,
Philippine Islands, ss:

In this City of Manila this 8th day of November, 1904, appeared before me Miguel Santos and Cirilo B. Santos, residents of San Miguel de Mayumo, Province of Bulacan, P. I., known to me to be the same who executed and signed the foregoing document, and they confirmed, ratified and swore under oath that the contents thereof were true in so far as same is based upon their knowledge of the subject matter and of the information which they have. Miguel Santos, Cirilo B. Santos, exhibited their respective registration certificates No. 592702, issued in San Miguel, Bulacan, April 8,
49 1904, and No. 592014, issued in San Miguel, Bulacan, on March 12, 1904.

[NOTARIAL SEAL.] JUAN M. PATERNO,
Notary Public.

My commission expires January 1st, 1905.

50 EXHIBIT "L" OF THE PETITIONERS.

Affidavit.

Know all men to whom these presents may come that I, Maria Santamaria, over the age of majority, resident of San Miguel de Mayumo, Province of Bulacan, P. I., and temporarily in this City of Manila, hereby declare and certify:

First. That I know the deceased Juan Roura, who was a resident

of San Miguel de Mayumo, Province of Bulacan, P. I., and also his legitimate daughters Juana and Maria Roura.

Second. That I know of my own knowledge that the said Juan Roura, prior to his death, executed his will and testament, in which he constituted as his heirs his two said daughters, Maria and Juana Roura, in and to the four-fifths part of his properties, rights and actions, in equal shares, and as heirs in the one-fifth part of the said properties, rights and actions, his three natural children, named Francisco, Emilio and Emilia, whom he recognized as his natural children had in union with me; that the properties rights and actions constituting said one-fifth part were awarded to the three last named, also in equal shares.

Third. That I am the natural mother of the said Francisco, Emilio and Emilia, who were minors at the time of the death of their natural father, Don Juan Roura, and were then under my control in accordance with law.

Fourth. That in my capacity as mother, with parental control, and in the name of my three said children I participated in the division of the estate of the above named Juan Roura, together with Tomas Jaime as guardian of his then wards, Maria and Juana Roura.

51 Fifth. That after the liquidation of the estate of said deceased, the division thereof was proceeded with and the delivery to me of the one-fifth part, corresponding to my said children, consisting of the following properties, according to my best recollection:

(*a*) A parcel of land in Kinamatayan-cabayo of 12 cavanes of seed in area, valued at $900 Mexican Currency.

(*b*) Another parcel of land in Pinambaran 10 cavanes of seed in area, valued at $1100 Mexican Currency.

(*c*) Another parcel in Pinambaran 2 cavanes of seed in area, valued at $500, Mexican Currency.

(*d*) Another parcel of land in Buloalto 7½ cavanes of seed in extent, valued at $800, Mexican Currency.

(*e*) A lot in the barrio of San Miguel, valued at $40, Mexican Currency.

$70, Mexican Currency, more or less, in cash, and $600, Mexican Currency, for the redemption of certain lands, which likewise belong to said fifty part; 50 cavanes, more or less, of rice, and bills receivable to the value of $200, Mexican currency, more or less; besides other further things which I do not recollect at this moment.

All of which property I have been administering since then and up to the present time, jointly with my son, Francisco.

Sixth. That in accordance with what is herein set forth, my said three sons can have no right, participation nor interest whatsoever in or to the lands of Sibul, which belong, in undivided interests, to the legitimate heirs of the deceased Juan Roura, who are the above named Maria and Juana Roura.

In witness of all of the foregoing, which has been interpreted in the Tagalog dialect to me by my son, Francisco Roura, who was present at the execution hereof, and being in accordance with my statements, I have requested my own son, Francisco, to write my

name and put the "X" in proof of the truth, for the reason that I do not know how to write.

52 Manila, this 26th of November, 1904.

MARIA X SANTAMARIA.

Signed in the presence of
FRANCISCO ROURA.

PHILIPPINE ISLANDS,
City of Manila, ss:

I certify that this 26th of November, 1904, appeared before me the person who stated her name to be Maria Santamaria, over the age of majority, resident of San Miguel de Mayumo, Province of Bulacan, P. I., and she stated to me she was the same person who executed the foregoing document, whose contents have been interpreted by me in the Tagalog dialect to the party appearing, and she acknowledged the same, confirming and swearing it to be true, based upon the knowledge which she has of the matter, and to be an act of her free will and deed. The declaring party did not exhibit to me a certificate of registration because of her sex.

AMBROSIO SANTOS,
Notary Public.

My Commission expires January 1, 1905.

53 EXHIBIT "M" OF THE PETITIONERS.

Affidavit.

Know all men by these presents that I, Francisco Roura y Santamaria, over the age of majority, resident of San Miguel de Mayumo, Province of Bulacan, P. I., and temporarily in the City of Manila, *I* declare and certify:

First. That I am one of the natural children recognized by the deceased Juan Roura, had by Doña Maria Santamaria, resident of San Miguel de Mayumo, Province of Bulacan, P. I., and an heir constituted together with my brother and sister, now deceased, Emilio and Emilia, by said Juan Roura in his will, of the one-fifth part of his properties, rights and actions after his death.

Second. That it is known to me that the properties and the rights thereto, constituting said one-fifth part which was to be received by us have already been set apart and delivered to our mother, Maria Santamaria, a long time since and are the properties which at the present time we possess as the inheritance of the one-fifth part which corresponded to us according to a partition had between our said mother and the guardian of our sisters, Maria and Juana Roura, to whom has appertained the four-fifths part.

Third. That by virtue of what is hereinabove set forth, we have and can have no right, participation nor interest in or to the lands of Sibul, and more especially in and to that which is pending registration of title in the Court of Land Registration.

In witness whereof I sign in the City of Manila this 26th
54 day of November, 1904.

FRANCISCO ROURA.

Signed in the presence of
REJIDO VILLARICIA.

PHILIPPINE ISLANDS,
City of Manila, ss:

I certify that this 26th day of November, 1904, appeared before me, Francisco Roura and Santamaria, over the age of majority, resident of San Miguel de Mayumo, Province of Bulacan, P. I., and he stated to me that he was the person who executed the foregoing document, whose contents he confirms and acknowledges and swears to be true whatever is therein stated based upon his knowledge of the subject matter, and that the same is an act of his free will and deed. The appearing party, Francisco Roura, exhibited to me his certificate of registration No. 605692, issued on April 18th, 1904, in San Miguel de Mayumo, Province of Bulacan, P. I.

[NOTARIAL SEAL.] AMBROSIO SANTOS,
Notary Public.

My appointment expires Jany. 1, 1905.

55 EXHIBIT "N" OF THE PETITIONERS.

No. 823, Department of Public Instruction, Bureau of Archives, Council of Administration of the Philippine Islands.

Excellent Sir:

This department having been convened in the session held this day with the members who are named in the margin, the following draft of report which the author thereof, Councilman Estanislao de Antonio, offered for deliberation, was approved by unanimous vote.

"Most Excellent Sir: Under date of February 20th, last past, your Excellency has seen fit to remit to this council, in order that it should render its report without delay, the proceeding concerning the installation of a sanitarium in Sibul. By the cession of the ownership of those medicinal waters to private enterprise guaranteed by the inspection of the State, the proceeding referred to commences with the copy of a motion which the General Inspection of Health and Sanitation remitted to your excellency through the medium of the General Directorate of Administration under date of May 6th, of the year last past, proposing, in view of the fact that there does not exist in the Philippines any sanitarium, and that the archipelago possesses such a wealth of mineral medicinal waters, the three springs in particular which tradition has always exalted for their just fame, namely Sibul, Galas and Agua Santas, in the provinces of Bulacan and Laguna, whose complete and interesting description has been made by the respective commission, and it

being urgent to place them in condition to render services of public utility, that, with the exception of Aguas Santas, where works of importance have been carried out, the exploitation thereof
56 be turned over to private enterprise, subsidizing the construction of the sanitariums, with the reservation of the right to inspect and control the establishments through the professors of medicine who may be named for the purpose, for all of which the Department of Public Works should formulate the necessary plan, subjecting its sanitary conditions to the Board of Health, in order to require sufficient guaranty without frustrating the idea of the owners; later, after the said central office sets forth its project, to refer the same plans in terms to the Sanitaria of Sibul and Fibi, apparently substituting this last, which is situated in the Province of Albay, and concerning which the rest of the writing does not concern itself nor state whether this spring has been described by the commission alluded to in place of the spring of Galas, and indicates that it should be exacted as a necessary condition in view of the slight material importance of the buildings which in the beginning should be constructed that they be commenced within the period of six months from and after the date of the grant thereof, and that the appointment of the directors should be made in harmony with the titulary directors, or one in this capital and the other in Madrid, hearing after the report of the General Inspection of Public Works, the illustrious opinion of the Superior Board of health. Following said motion with the approval of the General Directorate of Civil Administration it seems to have been determined by your excellency that the installation of such sanitaria would be very advantageous, constituting one of his desires ever since he knew of the existence thereof, but that it was necessary to secure
57 first the necessary information in order to know whether the springs of Sibul and Tibi are private property, and, in the meanwhile, as two buildings already exist upon good springs, one of which dedicated to the public requires some repairs, that the Department of Public Works should report by forming an estimate, and that the sale thereof to private persons should be announced upon the terms which should be proposed by the Board of Health, submitting the same to the ministry after hearing this council. To the copy mentioned in the previous paragraphs there follows another without any signature, although authenticated by the seal of the aforesaid General Board of Health and Sanitation, taken without doubt from the official memorial of the commission entrusted with the examination of the said springs, together with all which therein makes reference to the Sibul Spring, after which comes, relative apparently to the very opportune observation and order of your excellency concerning the determination of the ownership of the springs, a communication from the Civil Governor of Bulacan to the aforesaid inspection dated June 18, of the same year, stating that in said government there did not exist any data concerning the ownership of the sanitarium of Sibul, other than a record of which a copy is transmitted, which likewise appears of record here, and that neither are there further data in the Forestry Depart-

ment of the province. As in the record transmitted by copy by the Government of Bulacan the General Inspection of Health and Sanitation, and the General Directorate of Civil Administration, which latter states itself to be in conformity with the former, considers that it is demonstrated that the Sibul Spring does
58 not belong to any private person, but that it is the property of the State.

Wherefore, deeming that the foregoing communication of your excellency has been satisfactorily investigated, it is now proposed upon this assumption to solve the matter fundamentally, and it is necessary to give a complete idea in a separate paragraph of the document referred to.

What the Civil Government of Bulacan has remitted by a copy is simply the proceedings of compliance with a decree of the General Government enjoyed under the worthy charge of your excellency, dated March 5, 1886. It seems to be the case that in the proceedings instituted by Don Jose Torres on behalf of Don Regino Pengson, concerning a claim to the lands granted to the latter by composition in the Barrio of Sibul, pueblo of San Miguel de Mayumo, of the said province, it is found that the land granted to the claimant, like those which were granted to Jose Mercado and the Parochial Curate of the said pueblo, do not conform in their location nor boundaries with those set forth in the title deeds issued by the General Directorate of Civil Administration under date of November 9, October 19 and September 25, 1885. The discrepancies originating in errors committed by the expert appraiser of the lands when he did the corresponding work as acting deputy of unreclaimed lands. It is found, likewise, that the Sibul Spring has never been known as private property, nor is it included in the land which may have this character, but rather than that medicinal springs have been utilized without any hindrance or obstruction by the public in general, as is evidenced among other things by a certificate of the leading citizens of San Miguel de Mayumo and the voice of the people, and it is found finally that the General Inspection of Unreclaimed Lands
59 and the General Directorate of Civil Administration had been taken unawares by the expert referred to into the issuance, as they did issue, of titles of ownership by composition to the lands bordering upon the Sibul Springs by reason of which it might be believed that the spring is found included within some of them and that the free and public zone which all springs have and need for their enjoyment has disappeared. And it is concluded that the three proceedings of composition referred to embrace a vice of nullity from the very beginning, because of the incorrectness of the data which appear in the notes of the survey and measurements of the lands, and in the plans which accompany the same, and consequently that the titles issued do not describe the lands as in reality they are, and taking into account also other considerations concerning the intention of resulting guilt, with which the said expert might have acted, and the necessity of putting the said spring in such condition that its healthful waters may be availed of by means of constructed improvements, control and vigilance which may be necessary, it is determined: first, to declare that the spring referred to has always

been of the public domain and consequently the property of the state; second, that the three titles of ownership by composition of lands issued by the General Directorate of Civil Administration on the dates above cited become null and without effect, and also that there is annulled all which was done in the respective proceedings which may be instituted anew if the interested parties so petition; third, that before proceeding with the new composition of these lands, the General Directorate of Civil Administration shall arrange that an officer of the General Inspection of Public Works shall pro-
60 ceed to lay out and mark whatever appurtenances a modest but decent sanitarium requires and that parcels of land which may be utilized therefor be excluded forthwith from all composition without prejudice to the indemnities which may arise subsequently if any private party should prove that lands belonging to him had been occupied and that the sanitarium should be immediately constructed by the Administration as soon as the formalities provided for the purpose be fulfilled; fourth, that there should be taken up the title of the expert appraiser above referred to and that he become incapacitated for the exercise of this profession, and that this proceeding be transmitted furthermore to the courts for purposes of justice.

When the pertinent part had been communicated to the Civil Governor of Bulacan for its fulfillment with an order in addition of the General Directorate of Civil Administration that that official should demand the null title deeds from the persons possessing the same and remit them to the aforesaid General Directorate and should annul the entries to which said documents had given rise in the corresponding register, the said chief official of the province took the necessary steps giving as the result thereof: that the Parochial Curate of San Miguel de Mayumo, in whose favor one of said title deeds had been issued, stated, upon being requested to deliver up the same, that he could not return it because it had been misplaced; that neither did Don Jose Mercado make delivery of his title deed, stating that he had already sold the land referred to in the decree and furnished his title deed of ownership to the purchaser and the said Mercado had not been again found when by new order
61 of the governor he was sought in order to ask him for the name of the purchaser of his land to whom he had given his title deed; and that Don Regino Pengson did not have in his possession the document which was demanded of him because according to his attorney the same was to be found annexed to the record of the proceeding in which originated the resolution which was being fulfilled. Up to this point proceeds the record remitted by the copy of the Civil Governor of Bulacan.

In view of this the General Inspection of Health and Sanitation, under date of February 19th, last past, addressed the higher central department to which it is subordinate, setting forth that the Sibul Spring, being property of the State, according to the data secured, and it being possible therefore, to proceed to sell the same to private enterprise under the guaranty expressed in the general terms, but which will have to be detailed with all clearness and exactness in a set of conditions which should be drawn up in opportune time, it

is proper to proceed now in accordance with the indicated determination of your excellency, and that in the meanwhile the Governor of Albay should remit the information sought, already partially transmitted in so far as it concerns the sanitarium of Sibul to the Council of Administration for its report.

By virtue of this proposition, which the General Directorate of Civil Administration approves, your excellency has transmitted the record to this body as is stated at the beginning hereof. There is to be noted a certain lack of conformity between the last communication of the Inspection of Health, in which it is proposed that there should be submitted to the report of this Council that which *has*
referred to Sibul in accordance, as is said, with the order of
62 your excellency of May 29th and this order itself. Inasmuch while you have been good enough to order that this council be heard, it was not in relation to the Sibul Springs, nor without further steps than that of asking data of the Governor of Bulacan, but with respect to the Spring of Agua Santas, and after report of the Inspection of Public Works and the proposition by the Department of Health and Sanitation of the conditions under which the establishment should be sold to private enterprise because the matter with reference to Sibul was immediately set aside by your excellency in said resolution on account of the necessity of determining the ownership of the springs, and in truth, it would have been very useful if, as your excellency ordered with reference to good springs, these conditions and that substituted had been fixed before the record of the proceedings for the cession of the Sibul Spring to private exploitation subject to subsidy by the state and certain conditions, had come to this Advisory Body, because without the same the Council can only base its opinion upon general considerations and render the same in abstract terms. In this order, the advantage being patent indeed, and the necessity well felt that the Sibul Spring be placed in condition that its waters may be utilized by the many persons who suffer the frequent illnesses for which these waters are indicated by science and experience, by means of the construction of a suitable establishment suitable for said purpose, and it being added that the state would not be a good administrator thereof, such as is required for its reasonable exploitation truly compatible with
its humanitarian purpose and indispensible for its very con-
63 tinuance, not only does the Council find no objection to the cession of the sanitarium to private industry, but consider it an indisputable advantage. On the assumption that the spring and the adjacent lands belong to the state itself, and as it is not to be expected that the establishment from the beginning will give a profit proportionate to the capital necessary for its installation and maintenance, the subsidy seems indispensible, as naturally follows from the nature of such establishments which are subjected to sanitary inspection and control which the state orders or may order. But before adopting the proposed resolution it is deemed essential that it be ascertained, and that it appear in a manner which does not leave room for doubt, whether or not the Sibul Spring and the lands necessary for its use and exploitation belong in full and indisputable ownership to the state, since to make the intended grant for value

without removing all danger and all fear that questions of responsibility may arise as a consequence thereof, would be an act of little prudence, and in the judgment of the Council the decree of March 5, 1886, is not sufficient to produce the desired certainty, but, on the contrary, to give rise to the fears that the unfortunate contingency referred to may supervene, because, in addition to demonstrating that there exist persons who claim to be the owners or possessors of the lands in which the springs referred to arise, it does not appear that that decree can be taken as so sure a basis of a state of right as is supposed, since the competency of the administration to make declarations such as the resolution referred to contains is at least disputable, and some of the elements thereof may be characterized as in little conformity with the sovereign provisions
64 which prevail concerning the forms and process by means of which alone private property can be taken for works of public utility, and for that reason ineffective and inapplicable in view of the same and of the rights which they conserve; likewise, in the doctrinal part there are statements which transcend the purposes of the decree and which are not exempt from well founded objection on the ground of correctness and of pertinence, among which that which says that all springs have and need a public and free zone for their enjoyment. Finally, the conclusive determination of the matter appertains to the government of His Majesty.

This is the opinion of the Council. Your excellency, nevertheless, will order as he deems most proper, and returning the record referred to, I have the honor to transmit the same to the superior knowledge of your excellency for the determination which you may deem fit. God guard your excellency many years.

Manila, May 31, 1890.

Most Excellent sir:

JUSTO T. DELGADO. [RUBRIC.]

To his Excellency, the Governor General.

In the margin Gubernatorial Department—Members Director General of Civil Administration: Asensi—Icaza—Ordoñez—Elizalde—de Antonio.

I certify that the foregoing copy is taken literally from the original thereof, which is on file in this office, and I seal and sign the same in Manila on August 31, 1904.

MANUEL M. MIRANDA,
Acting Chief of Archives.

[Seal Bureau of Archives, Philippines.]

65 EXHIBIT 1 OF THE OPPONENT. No. 113.

The General Directorate of Civil Administration of the Philippines—Unreclaimed Lands—No. 1158—In the proceeding instituted by Don Jose Torós on behalf of Don Regino Pengson concerning claim to lands granted to the latter by composition in the Barrio of Sibul, Pueblo of San Miguel dé Mayumo, of that prov-

ince—His Excellency the Governor General in an order of the 5th of the current month, which your honor may see in detail in the Gazette of Manila, has been pleased to decree, among other things, the following:

It is declared that the spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the state. The three titles of ownership by composition of lands issued by the General Directorate of Civil Administration on September 25th, October 19th and November 9th, 1885, become null and without effect. Likewise there is annulled all that was done in the respective proceedings which may be instituted anew if the interested parties so petition. Before proceeding with the new composition of these lands the General Directorate of Civil Administration will arrange that an officer of the Inspection of Public Works shall lay out and mark whatever appurtenances a modest but decent sanitarium requires. The parcels which for this purpose are utilized shall be excluded forthwith from all composition without prejudice to the indemnities which may subsequently be made if any private party should prove that land belonging to him has been occupied. The sanitarium shall be constructed immediately by the administration, since the formalities prescribed for the purpose are ful-
66 filled. This I communicate to your honor for the fulfillment of this order in that which appertains to your honor, and in order that you be pleased to demand of the interested parties the said title deeds of ownership, and to remit the same to this Directorate as soon as you have them in your possession, and to annul the entries of the aforesaid title deeds in the register thereof which is kept in that Provincial Government. God guard your honor many years. Manila, March 15, 1886. Barrantes rubric follows—To the Governor of the Province of Bulacan.

Alcaldia of Bulacan, March 19, 1886. Let there be fulfilled what is provided in the foregoing honorable communication, and for the purpose, that order be issued with a transmittal of said communication to the Petty Governor of the Pueblo of San Miguel de Mayumo, for his information and the corresponding effects, and in order that he may demand of the interested parties the title deeds of ownership issued by the General Directorate of Civil Administration of these Islands on September 25th, October 19th and November 9th, of 1885, by composition of lands in the Barrio of Sibul, remitting the same to this government. And let there be annulled the entries of said title deeds in proper form in book of registry thereof which is kept in this government. Vicente Pardo—a rubric follows.

On the same date, March 19, 1886, the corresponding order was issued to the Petty Governor of the Pueblo of San Miguel de Mayumo, with the transmittal of the foregoing communication for the purposes set forth in the preceding decree, and there is attached to the note a copy of the Gazette of yesterday, in which is found
67 published in full the superior decree of the 15th of the present month, declaring that the spring and barrio of Sibul have always belonged to the public domain, and declaring the other necessary provisions. To all of which I certify.

General Directorate of Civil Administration, Manila, March 15, 1886. Account having been given by this central office to his excellency the Governor General of the proceeding instituted by Don Jose Fores on behalf of Don Regino Pengson relative to a claim of lands granted by composition in the barrio of Sibul, Pueblo of San Miguel de Mayumo, it being found that not only the land granted to the aforesaid Pengson, but also those granted to Jose Mercado and to the Parish priest of San Miguel, do not agree in their location nor boundaries with those set forth in the title deeds issued by this General Directorate under date of November 9th, October 19th and September 25th, of last year, respectively, and that these differences originate in errors committed by the expert appraiser of lands, Don Jose Mereno, when he practiced the acts relative to said lands in the capacity of Acting Deputy of Unreclaimed Lands. And it being found that the Sibul Spring has never been known as private property, nor is it included in land which may have this character, but rather that those medicinal waters have been utilized without any hindrance or obstacle, not only by the residents of the pueblo, but by the public in general, as is evidenced amongst other things by a certificate of the Municipal authorities of San Miguel de Mayumo, and is confirmed by the unanimous and universal voice of the public, and it being found that the General Inspection of Unreclaimed Lands and this General Directorate have been taken
68 unawares by the aforesaid expert to issue, as they did issue, by virtue of the surveys made by him, titles of ownership by composition of the lands bordering upon the Sibul Springs by reason of which it might be believed that the spring is found included within some of them, and that the public and free zone which all springs have and need for their enjoyment had disappeared, and considering that the three proceedings referred to embrace a vice of nullity from their beginning, because the data which appear in the notes of survey and measurement of the lands and the plans which accompany them are not correct, and consequently the title deeds issued do not describe the lands such as they really are, and considering that the party responsible for this discrepancy is the expert Don Jose Moreno, who, when called to explain the errors committed by him, has not done so satisfactorily, errors all the more inexcusable in that there are involved parcels relatively small and contiguous and surveyed and measured with an insignificant lapse of time between one and the other, giving rise to the suspicion that said errors have not been caused solely by neglect nor lack of zeal, but voluntarily and with knowledge of the mistakes which are contained. And considering that it has been once proved, as it has, that the ownership of the medicinal springs of Sibul does not belong to a private party, but to the state, it is necessary that the administration lend its support in constituting those establishments that control and that vigilance which the culture of the country, hygiene and even humanitarian sentiments exact, contributing in this manner to the generalization and increase of the use of waters so salubrious.

69 His excellency the Governor General, in an order of the 5th of the current month, has been pleased to decree: 1st, It is declared that the spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the state; second, that the three titles of ownership by composition of lands issued by the General Directorate of Civil Administration on Sept. 25th, Oct. 19th and Nov. 9th, 1885, become null and without effect, and also that there is annulled all which was done in the respective proceedings which may be instituted anew if the interested parties so petition; third, that before proceeding with the new composition of these lands, the General Directorate of Civil Administration shall arrange that an officer of the General Inspection of Public Works shall proceed to lay out and mark whatever appurtenances a modest but decent sanitarium requires and that parcels of land which may be utilized therefor be excluded forthwith from all composition without prejudice to the indemnities which may arise subsequently if any private party should prove that lands belonging to him had been occupied and that the sanitarium should be immediately constructed by the Administration as soon as the formalities provided for the purpose be fulfilled; and fourth, the title of Expert Appraiser of Lands for the State shall be taken from Jose Moreno and he shall become incapacitated for the exercise of this profession and besides this record shall be transmitted to the courts for the purposes of justice. Barrantes.

There is a seal which says: Alcaldia Mayor of the Province of Bulacan, Petty Governor of San Miguel; The General Directorate of Civil Administration of these Islands, under date of the 15th of the current month, states to me the following: In the pro-

70 ceeding instituted by Don Jose Fores on behalf of Don Regino Pengson relative to the claim of lands granted to the latter by composition in the Barrio of Sibul of the Pueblo of San Miguel de Mayumo, of your province. His excellency the Governor General, in an order of the 5th of the current month, which you may see in detail in the Gazette of Manila, has been pleased to decree, among other things, the following:

It is declared that the spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the state. The three titles of ownership by composition of lands issued by the General Directorate of Civil Administration on September 25th, October 19th and November 9th, 1885, become null and without effect. Likewise there is annulled all that was done in the respective proceedings which may be instituted anew if the interested parties so petition. Before proceeding with the new composition of these lands the General Directorate of Civil Administration will arrange that an officer of the Inspection of Public Works shall lay out and mark whatever appurtenances a modest but decent sanitarium requires. The parcels which for this purpose are utilized shall be excluded forthwith from all composition without prejudice to the indemnities which may subsequently be made if any private party should prove that land belonging to him has been occupied. The sanitarium shall be constructed immediately by the adminis-

tration, since the formalities prescribed for the purpose are fulfilled. This I communicate to your honor for the fulfillment of this order in that which appertains to your honor, and in order that you be pleased to demand of the interested parties the said title deeds
71 of ownership, and to remit the same to this Directorate as soon as you have them in your possession, and to annul the entries of the aforesaid title deeds in the register thereof which is kept in that Provincial Government. And I transmit the same to you for your knowledge and the corresponding effects, notifying you that after informing yourself of the order which is cited under date of the 5th instant published in full in the Gazette of yesterday, you may demand of the interested parties the title deeds of ownership referred to in the superior communication above inserted, transmitting the same to this government in the shortest possible time, in order to give fulfilled effect to that which is determined by his excellency the Governor General of these islands. Return this with the notations which accredit its punctual and faithful fulfillment. Bulacan, March 19, 1886. Pardo.

Tribunal of San Miguel, March 21, 1886—order—The preceding order of the Alcalde Mayor of this Province having been received with an enclosure of the decree of the General Directorate of Civil Administration of these Islands, referring to the proceeding instituted by Jose Fores on behalf of Don Regino Pengson relative to a claim of lands granted to the latter by composition in the Barrio of Sibul of this pueblo, for this purpose let the parties interested in the three title deeds of ownership issued by the General Directorate on September 25th, October 19th and November 9th, last, be informed of said decree, notifying you that after communication of the order which is cited, that you demand of the said interested parties the title deeds of ownership which are referred to, transmitting the same afterwards, together with notations of what is done,
72 to the Governor of this province in order that what has been determined by his excellency the Governor General of these islands may have full effect. Thus the Acting Petty Governor ordered and signs. To which I certify—Potenciano Buencamino, Mariano Juliano, Januario David. In San Miguel March 22, 1886. Upon order of said acting Petty Governor we the attesting witnesses presented ourselves at the Parish House of this pueblo and after knocking for admission, the father curate received us with greatest kindness, and we gave his reverence to understand the decree contained in the preceding order, and informed thereof he said that the title deed of ownership to which these proceedings refer having been mislaid it was not possible for him to return said title deed, and he signed with us, the attesting witnesses, to which we certify. Friar Alejandro Hernandez—Mariano Juliano—Januario David.

Notification to Jose Mercado. In the tribunal of the pueblo of San Miguel, on March 23, 1886, we the attesting witnesses, have read and notified the contents of the decree inserted in the foregoing order of the Government of this Province by interpretation to Jose Mercado, and informed thereof he stated that sometime since he had sold his land mentioned in said decree, for which title deed of own-

ership had been furnished him, and thus it is that not only the said land but likewise his aforesaid title deed has been delivered by him to the purchaser. Thus he stated and signed. To which we certify: Jose (Illegible)—Mariano Juliano—Januario David.

Notification to Regino Pengson. In San Miguel on March 23, 1886, we the attesting witnesses have read and notified the
73 contents of the decree inserted in the foregoing order of the governor of this province by interpretation to Regino Pengson, and notified thereof he alleged that he did not have in his possession his alleged title deed of ownership of his land in Sibul because his attorney, Sr. Fores, says that it is to be found annexed to the record of the proceeding which is pending concerning his said land. Thus he stated and signed to which we certify. Regino Pengson, Mariano Juliano, Januario David.

We certify that this 23rd day of March, 1886, these notes and proceedings were remitted to the Alcalde Mayor of this province, the same consisting of five valid pages including this. We produce the same by this annotation and thereto we certify. Mariano Juliano, Januario David.

Alcaldia Mayor of Bulacan, March 27, 1886. To the premises above set forth it does not appear that Don Jose Mercado stated who was the purchaser of the land in Sibul, of which the title deed is demanded, let a new order be issued to the Petty Governor of San Miguel in order that after causing to appear said detail he may demand said title deed of the purchaser in order that that which is provided by the superior authority may have fulfilled effect, and that a communication be directed with the necessary inserts to the Judge of the Court of First Instance of this province in order that if what is set forth by Regino Pengson in the notation appearing at page — be correct, he may transmit to this government the original which was issued on November 9th, of last year. Mariano—Rodriguez. There is a seal which says: Alcaldia Mayor of the Province of Bulacan—Petty Governor of San Miguel—Don Jose Mercado having stated in the process of demand which was made upon him that
the title deed of ownership issued to him for a parcel of land
74 in Sibul has been for sometime since in the possession of the purchaser of said land, and not having caused the name of the latter to appear you will notify the said Mercado to state whom this purchaser may be, and thereafter, when it so appears, you will require of said purchaser the prompt production of the said title deed, transmitting it to this government in order that what is provided by his excellency the Governor General of these islands, in his superior decree of the 15th instant, published in the Gazette No. 77 of the 18th instant, may have full effect. Return with the annotations of the proceedings had by virtue thereof. Bulacan, March 27, 1886. Rodriguez.

Tribunal of San Miguel, March 29, 1886. Order Be it fulfilled and carried out what is ordered in the preceding order of the Alcalde Mayor, governor of this province, and for the purpose order the appearance of Jose Mercado in order that the latter may state who was the purchaser of a parcel of land with the title deed of

ownership which was issued to him and as soon as he appears let there be required of the said purchaser the prompt production of said title deed, remitting the same to the governor of this province (and let all which is done be likewise transmitted) together with these proceedings. Thus the Acting Petty Governor ordered and signed, to which we certify—What is within parenthesis void—Potenciano Buencamino, Mariano Juliano, Limban Baltazar—s.c. note—citation of Jose Mercado. By virtue of what is required in the foregoing order, we produce the same in San Miguel on March 29, 1886, to which we certify.

MARIANO JULIANO,
LIMBAN BALTAZAR.

We certify that this 4th day of April, 1886, the appearance of Jose Mercado was ordered anew; to which we certify.

75 MARIANO JULIANO.
LIMBANO BALTAZAR.

Appearance.—In San Miguel April 5, 1886, appeared before the acting Petty Governor the constable of Sibul, stating that Jose Mercado was absent in the province of Nueva Ecija seeking his daily livelihood, and for this the former is ignorant of the date of his return. This he stated, and did not sign because he stated that he did not know how to do so, and the acting Petty Governor did so. To which we certify.—M. Buencamino—Mariano Juliano—Limbano Baltazar. Tribunal of San Miguel, April 5, 1886. Order.—In view of the foregoing appearance, from which it appears that the return of Jose Mercado is unknown, and in order that the fulfillment of the preceding order may not suffer delay, let the same be transmitted with these proceedings, as is ordered, to the Governor of this province. Ordered and signed by the Acting Petty Governor—To which we certify. E—Potenciano Buencamino—Mariano Juliano—Limbano Baltazar. Note—These proceedings were remitted to the government of this province, the same consisting of three valid pages, including this. We annotate the same in San Miguel April 5, 1886; to which we certify. Mariano Juliano—Limbano Baltazar.

This is a copy of the original record which is on file in this government of Bulacan, June 18, 1889. Signed P. S. Virgilio Enojardo.

There is a seal which says: Civil Government of the province of Bulacan.

76 General Directorate of Civil Administration, Inspector General of Health and Sanitation. No. 383. His excellency the Governor General, approving of what has been reported by the Department of Government of the Council of Administration by decree of this date, has seen fit to order that it be ascertained and certified in due form whether or not the spring of Sibul and the lands necessary for its use and exploitation belong in full and complete ownership to the state; all of which I communicate to your honor for your information in order that you be pleased to institute

the opportune proceeding in the matter, transmitting the same when terminated to the Central Directorate for the purposes which may be proper. God guard your Honor many years. Manila, June 21, 1890. Justo T. Delgado. To the Provincial Governor of Bulacan. There is a stamp in the margin which says: Civil Government of Bulacan, June 27, 1890. Noted. Chief 4. Let the proceeding be commenced which is ordered by the General Directorate. Torija Escrich. Illustrious Sir: His Excellency, the Governor, having ordered at the suggestion of the Civil Directorate, and in accordance with the report rendered by the Department of Government of the Council of Administration, that it be ascertained and certified in due form whether or not the Sibul Spring and the lands necessary for the use and exploitation thereof belong in full and indisputable ownership to the state, and this Government having been designated to institute the opportune proceeding, I beg that your illustrious honor be pleased to state to me whether in that bureau under your worthy charge there is any petition filed or title issued concerning the lands referred to. May God guard your illustrious honor,
77 etc. Bulacan, June 28, 1890. To the Illustrious Inspector General of Unreclaimed Lands.

I beg that your honor be pleased to state whether in that court under your worthy charge exist any data concerning litigation had for the composition of the lands of the Sanitarium of Sibul, and if so that you communicate to this government the determinations made concerning the same. God guard your honor, etc. Bulacan, August 16, 1890. To the Judge of First Instance of this Province.

In conjunction with the commune of municipal authorities of this pueblo you will report to this government concerning the data which may exist in that tribunal concerning persons who have claimed right of property in the lands of the Sanitarium of Sibul, the time when they made the same, and the determination had concerning the claims. Upon fulfillment hereof return. Bulacan, August 11, 1890. The Petty Governor of San Miguel. To the Petty Governor of San Miguel in conjunction with the commune of the municipal authorities of your pueblo. You will report to this government concerning the data which may exist in your tribunal concerning the persons who may at any time have claimed rights to the lands of the Sanitarium of Sibul, the time when they made the same, and the determination had concerning said claims, as well as a statement of who are the present possessors of the lands adjacent to said sanitarium for a distance of approximately 150 meters. Upon fulfillment hereof return. Bulacan, August 16, 1890.

General Inspection of Unreclaimed Lands of the Philippine Islands—No. 2759. Informed of the communication of your honor, dated June 28, last past, in which you have pleased to state
78 that that civil government under your worthy charge has been designated to institute a proceeding to ascertain whether the Sibul Spring and the lands necessary for the exploitation thereof belong in full and indisputable ownership to the state in fulfillment of what is ordered by his excellency the Governor General, and that your honor desires to know if in this inspection there exists any

petition referring to the said lands, or if any title has been issued which relates to the same, I have the pleasure to answer your honor the following: In this inspection there exist three records of proceedings commenced at the instance of Regino Pengson, Jose Mercado, and the Reverend Parochial Curate of San Miguel de Mayumo, respectively, which treat of the composition of lands in the immediate vicinity of the said Sibul Spring. These records of proceedings which were carried out by the former acting deputy Jose Moreno, were terminated by the issuance of the corresponding titles of ownership given by the General Directorate of Civil Administration in favor of the individuals named; but by reason of a claim filed that superior central body ordered that they be revised, as in fact was done, by the Engineer in Chief of the Forest Division of Central Luzon, and errors of importance having been found, the Governor General decreed on March 5, 1886, among other things, that the three aforesaid titles of ownership be annulled. In the order of the General Directorate of Civil Administration, in which was published the later superior resolution inserted in the Gazette of Manila of the 18th of the month and year above cited, was decreed the nullity of all that had been done in the said proceedings. It was declared that the Sibul Spring has always been of the public domain, and consequently property of the state,
79 and it was ordered that the composition of no land in the vicinity of the spring should be proceeded with before a project and plan of the sanitarium be made by an official of the Public Works, without prejudice to indemnity to those private persons who might have a right thereto. Besides these three proceedings above mentioned there appear in this inspection the following referring to the lands which are situated in the Barrio of Sibul, although they afford no indication that the lands which they cover are found near the spring: One in the name of Doña Ambrosio Pengson, terminated and title deed issued to her; another in the name of Damasco Bunduc, idem, idem; another idem of Don Fausto Bocual idem, idem; another idem of Don Jorge del Valle idem, idem; another idem of Don Benedicto Mazcales idem, idem; another idem of Don Fruto Cunanan idem, idem; another idem of Demetrio Pangilinan idem, idem, another of Don Pedro Santamaria in which the composition is proposed, but without the title having issued, because the interested party has not complied with the necessary requisites; another idem of Don Vicente Gonzales like the preceding one; another idem of Don Francisco de la Concha pending proof of the rights of possession to the land: This is all that I can state to your honor in answer to your aforesaid communication. God guard your honor many years. Manila, July 8, 1890. P. O. J. Guillemi. To the Civil Governor of Bulacan. There is a stamp on the margin which says: Civil Government of Bulacan, July 9, 1890. Noted. Chief Clerk 4. Attached to its record. Torija Escrich.

Under date of the 16th of August last past, I had the pleasure of directing to your honor a communication in which I begged

of you to be pleased to state to this government if — the court
80 under your worthy charge there exist data concerning litigations had for the possession of the lands of the sanitarium of Sibul, and if so that you make known the determinations made thereon. This I have the honor of repeating to your honor for the purposes which arise from a communication of the Governor General in which it is ordered that a proceeding be had in the shortest possible time by this government causing it to appear whether said lands belong in full and indisputable ownership to the state. God guard your honor, etc. Bulacan, September 3, 1890. To the Judge of First Instance of this province.

Petty Governor of San Miguel. Under date of August 16th, last, I directed to you an order that in conjunction with the commune of municipal authorities of your pueblo you should inform this government of the data which may exist in your tribunal concerning the persons who may have at any time claimed rights in the lands of the Sanitarium of Sibul, the epoch in which they made the same, and the determinations had concerning the claims, and who are the persons in possession of the lands nearest to said sanitarium within a distance of approximately 150 meters; and as you have not answered said order up to the present time I call the same to your attention in order that you give full compliance immediately to that which is therein ordered of you. Upon fulfillment hereof return. Bulacan, September 30, 1890.

Under date of 16th of August, last past, I had the pleasure of directing to your honor a communication in which I begged of you to be pleased to state to this government whether in that court under
your worthy charge there exist data concerning litigation had
81 for the possession of lands of the sanitarium of Sibul, and if so that you would make known the determinations had therein. This I have the pleasure of repeating to your honor for the purposes which arise from a communication of the Governor General in which it is ordered that a proceeding be had by this government in the shortest possible time making known whether said lands belong in full and indisputable ownership to the state. God guard your honor many years. Bulacan, September 3, 1890. Miguel Torija Escriche. To the Judge of First Instance of this province.

There is a stamp which says: Civil Government of the Province of Bulacan; and another which says: Civil Government Bulacan, September 4, 1890. Noted: Chief Clerk 4, attached to its record. Torija Escriche.

Bulacan, September 4, 1890. Order—The foregoing communication having been received, the clerks will give information concerning the status of the data to which said communication alludes, and this being done, that account thereof be given. Thus his honor ordered and signed: To which I certify—Adolfo G. Castro. Before me, Andres Alvares.

To the Judge: The undersigned clerk states to your honor that in the clerk's office under my charge there exists no data concerning litigation had concerning the possession of the lands of the Sani-

tarium of Sibul. This is all I can inform your honor of in compliance with what is required in the foregoing order. Bulacan, September 4, 1890. Andres Alvares.

To the Judge: The undersigned clerk states to your honor that in spite of the minute search which has been made in the clerk's office under my charge no data have been found which relate to litigation had for the possession of the lands of the Sani-
82 tarium of Sibul. This is all of which I can inform your honor in compliance with what is decreed in the foregoing order. Bulacan, September 4, 1890. Jose Angeles.

Bulacan, September 4, 1890. Order. In view of the foregoing reports of the clerks of this court let what has been done be transmitted to the Civil Governor of this province and let this order serve as formal communication of transmission. This his nonor ordered and signed as I certify. G. Castro. Before me, Andres Alvares.

Return: I certify that this 4th day of September, 1890, these proceedings were transmitted to the Civil Governor of this province in compliance with what is required in the foregoing order. To all of which I certify. Alvares.

Civil Government of the Province of Bulacan. Petty Governor of San Miguel. In conjunction with the commune of the municipal authorities of this pueblo you will inform this government concerning the data which may exist in your tribunal concerning persons who may have at any time claimed rights in the lands of the Sanitarium of Sibul, time when they made the same, and the determination had concerning the claims; as well as who are the present possessors of the lands in the immediate vicinity of said Sanitarium for a distance of 150 meters approximately. Upon fulfillment hereof return. Bulacan, August 16, 1890. Torija Escrich. There is a stamp in the margin which says: Civil Government of Bulacan, November 11, 1890, noted. Chief clerk 3—attach to the record—Torija Escrich.

To the Civil Governor: The Petty Governor, and the Commune of Municipal authorities of the pueblo of San Miguel de Mayumo, who subscribe hereto in fulfillment of the preceding order
83 of your honor have the honor to report that having searched the records of this tribunal concerning the lands of the Sanitarium of Sibul, of this jurisdiction, it appears that in different months of the year 1885 the residents of this pueblo, Don Jose Mercado, Don Juan Roura, Don Regino Pengson, all now deceased, and Don Alejandro Hernandez, who was Parochial Curate of the pueblo, respectively, claimed rights to the lands of the sanitarium, according to the annexed certificates then issued by this tribunal, which are herewith enclosed Nos. 1, 2, 3, 4 and 5, and the corresponding title deeds were issued by the General Directorate to the said Mercado, Pengson and Hernandez on October 19th, November 9th and September 25th of the said year, respectively; but by reason of a claim made by Regino Pengson to his lands in the said Sanitarium of Sibul, and in view of the confusion in the survey of the said lands, due to erroneous measurements made by the Deputy of Unreclaimed Lands, Jose Moreno, the question having been ventilated by the

General Directorate of Civil Administration under date of March 15, 1886, according to the annexed copy No. 6, the general government declared the titles of the lands which are the subject of this report to be null and without effect. Concerning the last part of the above cited order of your honor, the Municipal authorities say that there is no person who possesses lands of the Sanitarium within 150 meters of the spring, with the exception of the lot occupied by the house of the deceased Jose Salcedo, at 37 meters toward the east from said spring, purchased in absolute sale from Doña Ambrosia Pengson under a title of ownership issued by the General Directorate on September 21, 1885; and although the parcel of land of Jose
84 Mercado is found included at a distance of less than 150 meters toward the north, the title covering the same was annulled, as has been stated. This is all that can be reported concerning the particulars required, and they signed, as we the attesting witnesses certify: Simon m. Santiago—Cipriano Quijano—Pedro Senedrin—Francisco Diaz—Grogorio Marques—Faustino Maniquis—Simon Tecson Ocampo—Meliton Carlos-Jose de Leon—Daniel Viola—Jose Moses del Santiago—Marcelo Belayo Bernardo—Pelagio de Leon—Calixto Limpingco—Bartolome Viola de la Cruz—Valentin Viola—Juan Buencamino—Evaristo Siojo—Potenciano Buencamino—Antonio T. David. Attesting witnesses: Eustaquio C. Bernardo—Ignacio Sayo. There is a stamp in the margin which says: Province of Bulacan, San Miguel.

No. 1. Copy above cited. Don Potenciano Buencamino, etc. I certify that Don Jose Mercado has exhibited to me the certificate whose tenor is as follows: I certify that on this date there appeared in this tribunal Don Jose Mercado, resident of this pueblo, with personal cedula of the 8th class, second third, of the present year, enrolled as No. 61, in the head tax roll No. 66, and he stated that by virtue of his petition filed with the General Directorate of Civil Administration of these islands, praying for composition with the state of his land reclaimed and cleared by him, which is found in Sibul, or rather by the spring which exists in said barrio, and by order of said superior authority directed to the Deputy of Unreclaimed lands, Jose Moreno, the measurements of all its area has been proceeded with, drawing up for the purpose the corresponding note which has been transmitted to said superior authority by said deputy, adding that he has been in possession of said lands since 30 years from this date, more or less, as can state all of
85 the most aged leading citizens of this pueblo, and he desires that under a certificate of the latter, and of said deputy, a statement be issued concerning its measurement, and concerning what they may say with respect to his assertion. And the said principal citizens being present, as well as the aforementioned deputy, and all that the said appearing party stated being true, all signed. For the opportune purposes and in compliance with his petition, I issue these presents in said pueblo and the deputy and the Municipal authorities signed with me this 14th day of March, 1885. To all of which we certify: Potenciano Buencamino—Jose Moreno—Miguel Santos Viola—Lorenzo de la Fuente—Manuel Camza—Bal-

vino de Gusman—Ciriaco F. Libunao—Severino B. Julian—Pablo Cortes—Anacleto Cortes—Simon V. Santos—Marcelo B. Bernardo—Donato Abelardo Justo—Juan Buencamino—Jose B. Bemado—Policarpio Bartolome—Agustin Manajan—Estanislao Mendoza—Antonio Mananghaya—Pelagio de Leon—Calixto Linpingco—Ynocencio Faustino—Maximo Pengson—Alejandro Gonzales—Attesting witnesses, Marcelo Lorenzana—Mariano Juliano. The foregoing agrees with the original certificate which said Jose Mercado exhibited to me and at the request of the latter I issued the present copy in this tribunal on March 18, 1885, signing the same with my attesting witnesses. To all of which I certify. Potenciano Buencamino—Honorato Arnaldo—Mariano Juliano. Tribunal of San Miguel, August 27, 1890. Simon M. Santiago. There is a stamp in the margin which says: Province of Bulacan, San Miguel.

No. 2. Copy which is cited above. Potenciano Buencamino, etc. I certify that on this date there appeared in this tribunal Jose
86 Mercado, over the age of Majority, of this pueblo, residing in the site of Sibul, within the limits thereof, with his personal cedula of the 9th class, corresponding to the last third of the present year, under No. 61, of the head tax roll No. 66, in which he is to be found registered, and he stated that he holds and possesses, in the aforementioned sitio, a parcel of irrigated land sown in rice, and in which is found a spring which is that which serves to drain said lands, which have an area of a little more or less than four cavanes of seed, without counting another small uncultivated part. And the boundaries of said land are: on the north the lands of Regino Pengson; on the south those of Ambrosio Pengson; on the east, those of Francisco de la Concha; and on the west those of Regino Pengson; and that he has petitioned for composition with the state of said parcel by a petition filed in the General Directorate of Civil Administration, and being found in the pacific possession of said parcel of land without interruption of any kind for 30 years to this date, he asks that a certificate be issued to him of whether or not all of the matters hereinabove stated are true. And the Commune of Municipal authorities, being convened and the pretention of the appearing party heard, they state unanimously that all which is above set forth by him is true; that said land is irrigated; that it has a spring of water; that he has been in possession for more than 30 years up to the present time. For the opportune effects I issue these presents in said tribunal and the said commune of Municipal authorities sign the same with me on March 1, 1885. To all of which I certify. Potenciano Buencamino—Palagio de Leon—
87 Paulino Evangelista—Jose Maria Pengson—Sopriano Qujano—Bartolome Viola—Valentin Viola—Francisco Villarica—Pablo Carlos—Jose V. Bernardo—Donato A. Justo—Teodoro Yambut—Juan Buencamino—Severino Maniquis—Augustin Catchalian—Feliciano Tecson—Hermogenes Maniquis—Faustino Maniquis—Antonio T. David—Urbano Jose—Attesting witnesses: Honorato Arnaldo—Mariano Juliano. Tribunal of San Miguel de Mayumo, August 27, 1890. Simon M. Santiago. There is a stamp on the margin which says: Province of Bulacan, San Miguel.

3. No. 3. Copy which is above cited. Potenciano Buencamino. I certify that on this date there appeared in this tribunal Jose Mercado, over the age of majority, resident of this pueblo, with personal cedula of the 9th class under No. 61 in the head tax roll No. 66, and he stated that he holds and possesses as his property in the sitio of Sibul, barrio of Tartaro, within the limits of this pueblo, three parcels of irrigated land, two of which are sown in rice, and the other serves as a lot or garden where he has his house erected, this last being less than a cavan of seed in area, with a spring of water within it, and having for boundaries: on the north the lands of Ambrosio Pengson; on the south lands of his own and of the Parochial Curate; on the west lands of said Parochial Curate and the Sibul Estero; on the east lands of Regino Pengson. The second measures four cavanes of seed, and is bounded on the north by the lands of Ambrosio Pengson; on the east those of Eugenia Pengson and Francisco Manisquis; on the south by lands of his own and those of Ambrosio Pengson and Dionicio de los Reyes; and on the west by lands of Regino Pengson. And the third embraces four cavanes of seed with another uncultivated part, and is bounded on the north by lands of
88 Regino Pengson; on the east by those of Francisco de la Concha; on the south by those of Ambrosio Pengson; on the west by those of said Regino Pengson. That he has been in the pacific possession of said parcels of land for more than 30 years without interruption of any kind, and he prays that certificate be issued to him as to whether or not the facts above stated are true—the commune of Municipal authorities having been convened, and the petition of Mercado heard, the latter unanimously state that what is set forth by the party appearing is certain and true; that he has been cultivating and possessing said parcels of land for more than 30 years up to the present time, adding that the two first parcels were measured and surveyed after publication of bans and citation of the adjacent owners was first had on the 28th of February, last, by the deputy inspector of Unreclaimed Lands, Jose Moreno, with the aid of the councilman, Mariano Pineda, and that there had been no protest, either before, during the time, nor after said measurement, and the Acting Petty Governor, the Deputy of Unreclaimed Lands, said councilman, together with the adjacent owners, Regino Pengson, and Ambrosio Pengson, the present Parochial Curate, and the commune of Municipal authorities, nor the minutes which were made of said measurement; and at the request of said Jose Mercado I issue these presents in this tribunal on May 3, 1885. To which we certify. Potenciano Buencamino—Jose Moreno—Mariano Pineda—Antonio T. David—Estanislao—Mendoza—Ciriaco Tecson—Jose Liosan—Estanislao de la Puenta—Paulino Evangelista—Eulalio A. Justo—Fulgencio Payanal—Nicolas Encarbado—Francisco Villarica—Donato A. Justo—Teodoro Yambut—Pelagio de Leon—Toribio Diño—Augustin Gatchalian—Simon
89 Gregorio—Severino Maniquis—Juan Buencamino—Isidoro Crystal—Feliciano Tecson—a—Severino B. Julian—Manuel Canosa—Sotero Canosa—Rufino Mangalingan. Attesting Witnesses: Honorato Arnaldo—Mariano Julian. Tribunal of San Miguel, August 27, 1890. Simon M. Santiago.

No. 4. Copy which is cited above. Don Potenciano Buencamino. I certify that on this date, and at the solicitation of Juan Roura, a peninsular Spaniard, resident of this pueblo, with personal cedula of the fourth class, issued by the Administration of Public Exchequer of this province, there appeared Pedro Laganson, Telesforo Garcia and Pedro Santamaria, residing in the barrio of Tartaro, of this pueblo, the first two with personal cedulas of the 9th class, and the last named privileged as the head man of Barangay, in order that by taking their testimony under oath they may state who is found at the present time in possession of the lands of Sibul whose boundaries are the following: to the north land of Ambrosio Pengson; on the south and east lands of Regino Pengson, and of Friar Alejandro Hernandez, parochial curate of this pueblo; and on the west the lands of said Parochial Curate. And second whether they know that the said Don Jose has cleared said land. And third whether they have knowledge that Regino Pengson endeavored to take away the possession of said land from Jose Mercado. And having been notified through the necessary interpreter they answered:—That at the present time Jose Mercado is in the possession of said lands. To the second question they answered that they have not seen Jose Mercado clear said land, but that it was clear when he was occupying it and was continuing cultivating a part
90 thereof sowing rice; and to the third question that they did not know whether Regino Pengson attempted to take away the possession of said land from Jose Mercado. And at the request of the interested party I produce these presents for the purposes which may be proper. I sign the same without the interrogated parties for the reason that they stated they did not know how and their signatures are affixed at their request by Ciriaco F. Libunao—Nicolas Pengson—Cayetano Evangelista. All of age, and of this place, in this tribunal of the aforesaid pueblo, this 22nd day of April, 1885. To which we certify: Potenciano Buencamino—at the request of Pedro Leganson, Ciriaco F. Lanuar; at the request of Telisforo Garcia, Nicolas Pengson; at the request of Pedro Santamaria, Cayetano Evangelista. Attesting witnesses: Honorato Arnaldo—Mariano Juliano. Tribunal of San Miguel, August 27, 1890. Simon M. Santiago. There is a stamp on the margin which says: Province of Bulacan, San Miguel—No. 5—Copy which is above cited—Potenciano Buencamino, etc. I certify at the instance of the present parish priest of this pueblo, the very reverend Alejandro Hernandez, that he has in his possession a parcel of land in the sitio of Sibul the boundaries of which are: On the north, the spring of sulphurous waters of said Sibul; on the south by the road which leads to the public square of Sibul; on the east by said plaza which leads to the well known Sibul Spring; and on the west the seeding grounds of Regino Pengson which land is known to the undersigned to be that belonging to Jose Mercado and purchased from the latter fifteen years ago by the then Parochial Curate of this
91 pueblo, Francisco Ariola, and transferred in favor of Padre Alejandro Hernandez, the present possessor thereof, who has likewise petitioned for the composition of the said land, which embraces one quiñon two balitas, five loanes and ninety-four brazas,

3. No. 3. Copy which is above cited. Potenciano Buencamino. I certify that on this date there appeared in this tribunal Jose Mercado, over the age of majority, resident of this pueblo, with personal cedula of the 9th class under No. 61 in the head tax roll No. 66, and he stated that he holds and possesses as his property in the sitio of Sibul, barrio of Tartaro, within the limits of this pueblo, three parcels of irrigated land, two of which are sown in rice, and the other serves as a lot or garden where he has his house erected, this last being less than a cavan of seed in area, with a spring of water within it, and having for boundaries: on the north the lands of Ambrosio Pengson; on the south lands of his own and of the Parochial Curate; on the west lands of said Parochial Curate and the Sibul Estero; on the east lands of Regino Pengson. The second measures four cavanes of seed, and is bounded on the north by the lands of Ambrosio Pengson; on the east those of Eugenia Pengson and Francisco Maniquis; on the south by lands of his own and those of Ambrosio Pengson and Dionicio de los Reyes; and on the west by lands of Regino Pengson. And the third embraces four cavanes of seed with another uncultivated part, and is bounded on the north by lands of
88 Regino Pengson; on the east by those of Francisco de la Concha; on the south by those of Ambrosio Pengson; on the west by those of said Regino Pengson. That he has been in the pacific possession of said parcels of land for more than 30 years without interruption of any kind, and he prays that certificate be issued to him as to whether or not the facts above stated are true—the commune of Municipal authorities having been convened, and the petition of Mercado heard, the latter unanimously state that what is set forth by the party appearing is certain and true; that he has been cultivating and possessing said parcels of land for more than 30 years up to the present time, adding that the two first parcels were measured and surveyed after publication of bans and citation of the adjacent owners was first had on the 28th of February, last, by the deputy inspector of Unreclaimed Lands, Jose Moreno, with the aid of the councilman, Mariano Pineda, and that there had been no protest, either before, during the time, nor after said measurement, and the Acting Petty Governor, the Deputy of Unreclaimed Lands, said councilman, together with the adjacent owners, Regino Pengson, and Ambrosio Pengson, the present Parochial Curate, and the commune of Municipal authorities, nor the minutes which were made of said measurement; and at the request of said Jose Mercado I issue these presents in this tribunal on May 3, 1885. To which we certify. Potenciano Buencamino—Jose Moreno—Mariano Pineda—Antonio T. David—Estanislao—Mendoza—Ciriaco Tecson—Jose Liosan—Estanislao de la Puenta—Paulino Evangelista—Eulalio A. Justo—Fulgencio Payanal—Nicolas Encarbado—Francisco Villarica—Donato A. Justo—Teodoro Yambut—Pela-
gio de Leon—Toribio Diño—Augustin Gatchalian—Simon
89 Gregorio—Severino Maniquis—Juan Buencamino—Isidoro Crystal—Feliciano Tecson—a—Severino B. Julian—Manuel Canosa—Sotero Canosa—Rufino Mangalingan. Attesting Witnesses: Honorato Arnaldo—Mariano Julian. Tribunal of San Miguel, August 27, 1890. Simon M. Santiago.

No. 4. Copy which is cited above. Don Potenciano Buencamino. I certify that on this date, and at the solicitation of Juan Roura, a peninsular Spaniard, resident of this pueblo, with personal cedula of the fourth class, issued by the Administration of Public Exchequer of this province, there appeared Pedro Laganson, Telesforo Garcia and Pedro Santamaria, residing in the barrio of Tartaro, of this pueblo, the first two with personal cedulas of the 9th class, and the last named privileged as the head man of Barangay, in order that by taking their testimony under oath they may state who is found at the present time in possession of the lands of Sibul whose boundaries are the following: to the north land of Ambrosio Pengson; on the south and east lands of Regino Pengson, and of Friar Alejandro Hernandez, parochial curate of this pueblo; and on the west the lands of said Parochial Curate. And second whether they know that the said Don Jose has cleared said land. And third whether they have knowledge that Regino Pengson endeavored to take away the possession of said land from Jose Mercado. And having been notified through the necessary interpreter they answered:—That at the present time Jose Mercado is in the possession of said lands. To the second question they answered that they have not seen Jose Mercado clear said land, but that it was clear when
90 he was occupying it and was continuing cultivating a part thereof sowing rice; and to the third question that they did not know whether Regino Pengson attempted to take away the possession of said land from Jose Mercado. And at the request of the interested party I produce these presents for the purposes which may be proper. I sign the same without the interrogated parties for the reason that they stated they did not know how and their signatures are affixed at their request by Ciriaco F. Libunao—Nicolas Pengson—Cayetano Evangelista. All of age, and of this place, in this tribunal of the aforesaid pueblo, this 22nd day of April, 1885. To which we certify: Potenciano Buencamino—at the request of Pedro Leganson, Ciriaco F. Lanuar; at the request of Telisforo Garcia, Nicolas Pengson; at the request of Pedro Santamaria, Cayetano Evangelista. Attesting witnesses: Honorato Arnaldo—Mariano Juliano. Tribunal of San Miguel, August 27, 1890. Simon M. Santiago. There is a stamp on the margin which says: Province of Bulacan, San Miguel—No. 5—Copy which is above cited—Potenciano Buencamino, etc. I certify at the instance of the present parish priest of this pueblo, the very reverend Alejandro Hernandez, that he has in his possession a parcel of land in the sitio of Sibul the boundaries of which are: On the north, the spring of sulphurous waters of said Sibul; on the south by the road which leads to the public square of Sibul; on the east by said plaza which leads to the well known Sibul Spring; and on the west the seeding grounds of Regino Pengson which land is known to the undersigned to be that belonging to Jose Mercado and purchased from the
91 latter fifteen years ago by the then Parochial Curate of this pueblo, Francisco Ariola, and transferred in favor of Padre Alejandro Hernandez, the present possessor thereof, who has likewise petitioned for the composition of the said land, which embraces one quiñon two balitas, five loanes and ninety-four brazas,

and in which is erected a house of boards and cogon grass, the property of the present Parochial Curate, Alejandro Hernandez, and which has served as a resting place for many years to the sick who have needed to take the Sibul waters. To all of which I certify by these presents in this tribunal of the said pueblo on March 17, 1885. To which we certify. Potenciano Buencamino, Ynocencio Faustino, Jose Mercado, Alejandro Tecson, Marcelo V. Bernardo, Tranquilino V. Santos, Pedro Villacorte, Miguel Canosa, Jose V. Bernardo, Ciriaco Libunao, Gregorio de Dios, Raymundo Eugenio, Anselmo de los Santos, Simon Gregorio. Attesting witnesses: Honorato Arnaldo, Mariano Juliano. Tribunal of San Miguel, August 27, 1890. Simon M. Santiago.

No. 6. Copy above cited. Petty Governor of San Miguel. The General Directorate of Civil Administration of these islands, under date of the 15th of the present month, states to me the following: In the proceedings instituted by Jose Fores on behalf of Regino Pengson concerning a claim to lands granted to the latter by composition in the Barrio of Sibul, of the Pueblo of San Miguel de Mayumo, of the Province of Bulacan, his excellency the Governor General, in a decree of the 5th of the current month, which your honor may see in detail in the Gazette of Manila, has been pleased to decree, among other things, the following:—It is declared that the spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the

92 state; the three titles of ownership by composition of lands issued by the General Directorate of Civil Administration on September 25th, October 19th, and November 9th, 1885, become null and without effect. Likewise there is annulled all that which was done in the respective proceedings which may be instituted anew if the interested parties so petition. Before proceeding with the new composition of these lands the General Directorate of Civil Administration shall arrange that an official of the Inspection of Public Works proceed to lay out and mark whatever appurtenances a modest but decent sanitarium may require; and the lands which for this purpose are utilized shall be forthwith excluded from all composition without prejudice to the indemnities which may subsequently be granted if any private party should prove that the land belonging to him has been occupied. The sanitarium shall be constructed immediately by the administration as soon as the formalities provided for the purpose shall be fulfilled. All of which is communicated to your honor for the fulfillment of this decree in so far as it concerns your honor, and in order that you be pleased to demand of the interested parties the aforesaid title deeds of ownership and transmit the same to this Directorate as soon as you have them in your possession, and to annul the entries of the aforesaid title deeds in the registry thereof which is kept in your provincial government. And I transmit the same to you for your information and the corresponding effects, notifying you that after informing yourself of the decree which under the date of the 5th of the present month was published in full in the Gazette of yesterday, you

93 may demand of the interested parties the title deeds of ownership to which reference is made in the foregoing superior

communication, transmitting the same to this government in the shortest possible time in order that what is determined by his excellency the Governor General of these islands may have fulfilled effect. Return with the annotations which accredit the punctual and exact fulfillment hereof. Bulacan, March 19, 1886. Pardo.

This order having been communicated to the very Reverend Parochial Curate Alejandro Hernandez, and Jose Mercado, and Regino Pengson, one and the other of them state as follows: The first that he had misslaid his title deed and it was not possible for him to return the same. The second that he had sold his land sometime since and that his said title deed had been delivered to the purchaser; and the last named stated that he did not have his title deed in his possession for the reason that his attorney, Sr. Fores, stated that it was to be found annexed to the record of the proceeding pending, concerning his said title deed, and the said order be transmitted with the record appearing on five valid pages this 23rd day of March, 1886. Potenciano Buencamino. Tribunal of San Miguel, August 28, 1890. Simon M. Santiago. There is a seal on the margin which says: Province of Bulacan, San Miguel.

Having been designated by his excellency the Governor General in a decree of the 21st of June, last, for the investigation and the formalization of the opportune proceeding whether or not the Subul Spring and the lands necessary for the use or exploitation thereof belong in full and indisputable ownership to the state, I beg
94 that your honor be pleased to transmit to me at this capitol whatever data appear in that Inspection under your worthy charge concerning said spring, in order to fulfill the aforesaid decree. God guard your honor many years. Bulacan, September 25, 1890. To the Inspector General of Health and Sanitation.

Inspector General of Health and Sanitation of the Philippines, No. 474. For the purposes set forth in your kind communication of September 25, last, I have the pleasure of transmitting to your honor the annexed copy of the record filed in this Central Office on June 18, 1889, by that civil government under your worthy charge referring to the Spring of Sibul of the Pueblo of San Miguel de Mayumo of that province. God guard you many years. Manila, October 2, 1890. T. S. Angel Leon. To the Civil Governor of Bulacan. There is a stamp in the margin which says: Civil *Givil* Government of Bulacan, October 5, 1890. Noted. Chief Clerk No. 4. Attached to the record, Torica Escrich.

General Directorate of Civil Administration of the Philippines—Unreclaimed Lands—No. 1158—In the proceedings instituted by Jose Fores on behalf of Regino Pengson concerning a claim to lands granted to the latter by composition in the Barrio of Sibil of the pueblo of San Miguel de Mayumo of that province, his excellency the Governor General, in a decree of the 5th of the current month, which your honor may see in detail in the Gazette of Manila, has been pleased to decree, among other things, the following: It is declared that the spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the state. The three titles of ownership by composition of
95 lands issued by the General Directorate of Civil Administration on September 25th, October 19th and November 9th,

1885, become null and without effect. There is likewise annulled al- which was done in the respective proceedings which may be instituted anew if the interested parties petition therefor. Before proceeding with the new composition of these lands the General Directorate of Civil Administration shall arrange that an official of the Inspection of Public Works shall proceed to lay out and mark whatever appurtenances a modest but decent sanitarium may require. The lands which for this purpose are utilized shall be excluded forthwith from all composition, without prejudice to the indemnities which may subsequently be granted if any private party shall prove that land belonging to him has been occupied. The sanitarium shall be constructed immediately by the administration as soon as the formalities provided for the purpose are fulfilled. This I communicate to your honor for the fulfillment of this decree in so far as it concerns your honor and in order that you be pleased to demand of the interested parties the aforesaid title deeds of ownership, and to annul the entries of the said title deeds in the register thereof which is kept in that provincial government. God guard you many years. Manila, March 15, 1886. Barrantes. Then follows a rubric. To the Governor of the Province of Bulacan—Capitol of Bulacan, March 19, 1886. Fulfill what is ordered in the foregoing honorable communication and for the purpose let order be issued transmitting the same to the Petty Governor of the pueblo of San Miguel de Mayumo for his information and the corresponding effects, and in order that he may demand of the in-

96 terested parties the title deeds of ownership issued by the General Directorate of Civil Administration of these islands on September 25th, October 19th and November 9th, 1885, by composition of lands of the barrio of Sibul, and transmit the same to this government. And let there be annulled the entries of said title deeds in proper form in the book of registry of the same which is kept in this government. Vicente Pardo. There follows the rubric. On said date, March 19, 1886, the corresponding order was issued to the Petty Governor of the pueblo of San Miguel de Mayumo, transmitting the foregoing communication for the purposes set forth in the foregoing decree, and at the end was annexed a copy of the Gazette of yesterday, in which is found published in full the superior decree of the 15th of the present month declaring the spring and barrio of Sibul has always belonged to the public domain, and declaring the other necessary provisions. To all of which I certify. General Directorate of Civil Administration, Manila, March 15, 1886.

Account having been given by this Central Office to his excellency the Governor General of the proceeding instituted by Jose Fores on behalf of Regino Pengson concerning a claim to lands granted by composition in the Barrio of Sibul, pueblo of San Miguel de Mayumo, and it appearing that the lands granted to Jose Mercado and to the Parochial Curate of San Miguel do not agree in the location of boundaries with those set forth in the title deeds issued by this General Directorate under dates of November 9th, October 19th and September 25th, of last year, respectively, and that these discrepan-

cies originate in errors committed by the expert appraiser of
97 lands, Jose Moreno, in the making of boundaries of said lands in the capacity of Acting Deputy of Unreclaimed Lands. And it appearing that the Sibul Spring has never been known as private property, nor it is included in lands which have this character, but rather that those medicinal waters have been utilized without any obstruction or hindrance, not only by the residents of the pueblo, but by the public in general, as is witnessed, amongst other things, by a certificate of the leadings citizens of San Miguel de Mayumo, and is confirmed by the unanimous and universal voice of the people, and it appearing that the General Inspection of Unreclaimed Lands of this General Directorate have been taken unawares by the aforesaid expert into the issuance as they did issue, by virtue of the surveys made by the latter, of titles of ownership by composition of the lands bounding upon the waters of Sibul, by reason of which it might be believed that the spring is found included within some one of them, and that the public and free zone which all waters have and require for their enjoyment, had disappeared. And considering that the three proceedings aforesaid embrace a vice of nullity from their beginning because the data which appear in the notes of survey and measurement of the lands and in the plans which accompany them are not correct, and consequently the title deeds issued do not describe the lands such as they are in reality. And considering that the party responsible for this discrepancy is the expert Jose Moreno, who when called to explain the errors committed by him has not done so satisfactorily, errors all the more inexcusable in that there were involved parcels of land relatively small, adjacent, and which were surveyed and measured
98 within an insignificant lapse of time between one and the other, thus giving rise to the suspicion that such errors were not caused solely by foresight and lack of zeal, but voluntarily and with knowledge of the mistakes which they contained. And considering that having been once established, as is established, the fact that the property in the medicinal waters of Sibul does not belong to a private party but to the state, it is necessary that the administration contribute to its support, to constitute those establishments that control and that vigilance which the culture of the country, hygiene and even the humanitarian sentiments exact, contributing in this manner to the generalization and increase of the use of waters so salubrious. His excellency, the Governor General, in a decree of the 5th of the current month has been pleased to decree: 1st, it is declared that the spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the state; second, that the three titles of ownership by composition of lands issued by the General Directorate of Civil Administration on September 25th, October 19th and November 9th, 1885 become null and without effect, and also that there is annul-ed all which was done in the respective proceedings which may be instituted anew if the interested parties so petition; third, before proceeding with the new composition of these lands, the General Directorate of Civil Administration shall arrange that an officer of the

General Inspection of Public Works shall proceed to lay out and mark whatever appurtenances a modest but decent sanitarium requires and that parcels of land which may be utilized therefor be excluded forthwith from all composition without prejudice to the indemnities which may arise subsequently if any private
99 party should prove that lands belonging to him had been occupied and that the sanitarium should be immediately constructed by the administration as soon as the formalities provided for the purpose be fulfilled; and fourth, the title of Expert Appraiser of Lands for the State shall be taken from Jose Moreno and he shall become incapacitated for the exercise of this profession and besides this record shall be transmitted to the courts for the purposes of Justice. Barrantes. There is a seal which says: Capitol of the Province of Bulacan, Petty Governor of San Miguel. The General Directorate of Civil Administration of these Islands under date of the 15th instant states to me the following: In the proceeding instituted by Jose Fores on behalf of Regino Pengson concerning a claim to the lands granted to the latter by composition in the barrio of Sibul Pueblo of San Miguel de Mayumo of that province, his excellency the Governor General in a decree of the 5th of the current month, which your honor can see in detail in the Gazette of Manila, has been pleased to decree, among other things, the following: It is declared that the spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the state; that the three titles of ownership by composition of lands issued by the General Directorate of Civil Administration on Sept. 25th, Oct. 19th and Nov. 9th, 1885 become null and without effect, and also that there is annulled all which was done in the respective proceedings which may be instituted anew if the interested parties so petition; that before proceeding with the new composition of these lands, the General Directorate of Civil Administration shall arrange that an officer of the General Inspection of Public Works
100 shall proceed to lay out and mark whatever appurtenances a modest but decent sanitarium requires and that parcels of land which may be utilized therefor be excluded forthwith from all composition without prejudice to the indemnities which may arise subsequently if any private party should prove that lands belonging to him have been occupied and that the sanitarium should be immediately constructed by the administration as soon as the formalities provided for the purpose be fulfilled. All of which I communicate to your honor for the fulfillment of this decree in so far as concerns your honor, and in order that you be pleased to demand of the interested parties the aforesaid title deeds of ownership and transmit them to this Directorate as soon as you have been in your possession, and to annul the entries of the aforesaid title deeds in the register thereof which is kept in that provincial government. And I transmit it to you for your information and the corresponding effects, notifying you that after informing yourself of the decree which is cited, dated the 5th of the present month and published in full in the Gazette of yesterday, you demand of the interested parties the title deeds of ownership which are referred to in the above quoted

superior communication, transmitting them to this government in the shortest possible time in order that what is determined by his excellency the Governor General of these islands may have fulfilled effect. Return with the notations which accredit the punctual and the exact fulfillment thereof. Bulacan March 19, 1886—Pardo—Tribunal of San Miguel, March 21, 1886—orders—The present order of the Alcalde Mayor of this province having been received together with the decree of the General Directorate of Civil Administration of these islands, referring to the proceedings commenced by Jose Fores on behalf of Regino Pengson concerning a claim to lands granted to the latter by composition in the barrio of Sibul of this pueblo, for this purpose notify the parties interested in the three title deeds of ownership issued by the G-neral Directorate on September 25th, October 19th and November 9th, last, of said decree, requiring them that after informing themselves of the decree which is cited, that you demand of the aforesaid interested parties the title deeds of ownership which are referred to, remitting the same afterwards with notation of what has been done to the government of this province in order that what is determined by his excellency the Governor General of these islands may have effect. Thus the Acting Petty Governor ordered and signed. To which we certify: Potenciano Buencamino, Mariano Juliano, Januario David—Notification.—San Miguel de Mayumo, on March 22nd 1886, by order of the Acting Petty Governor we the attesting witnesses appeared at the parochial residence of this pueblo and after giving notice of the proceedings the Father Curate received us with greatest kindness and we caused his reverence to understand the decree inserted in the preceding order, and after having notified him he said that the title deed of ownership to which these proceedings refer having been mislaid it was not possible for him to return said title deed; and he signed with us the attesting witnesses. To which we certify—Alejandro Hernandez, Mariano Juliano, Januario David. Notification to Jose Mercado. In the tribunal of the pueble of San Miguel, March 23, 1886, we the attesting witnesses have read and given notice of the contents of the decree inserted
102 in the foregoing order of the government of this province through an interpreter of Jose Mercado, and having been informed thereof he stated that sometime since he had sold his land mentioned in said decree, wherefore he had furnished the title deed of ownership, and thus it is that said title deed, as well as his title, he delivered to the purchaser. Thus he stated and signed. To which we certify: Jose Mariano Juliano, Januario David. Notification to Regino Pengson. In San Miguel March 23, 1886. We the attesting witnesses have read and given notice of the contents of the decree inserted in the foregoing order of the government of this province through an interpreter to Regino Pengson, and when informed thereof he stated that his said title deed of ownership of his land in Sibul is not in his possession because his attorney, Sr. Fores, states that it is to be found annexed to the record of the proceeding which is pending concerning said lands. Thus he stated and signed. To which we certify: Regino Pengson, Mariano

Juliano, Januario David. Capitol of Bulacan, March 27, 1886. these proceedings were transmitted to the Alcalde Mayor of the province, and that the same consist of five valid pages including this. We produce the same as our return and certify thereto. Mariano Juliano, Januario David. Capital of Bulacan, March 27, 1886. With regard to the foregoing premises it appearing that Jose Mercado does not state who was the purchaser of the land in Sibul of which the title deed is demanded, let a new order be issued to the Petty Governor of San Miguel de Mayumo in order that when this particular is made to appear he may demand said title deed of the purchaser, in order that that which is ordered by the superior
103 authority may have fulfilled effect, and let there be a communication directed wth the necessary enclosures to the Judge of First Instance of this Province in order that if the manifestation of Regino Pengson be correct he may transmit to this government the original which was issued on November 9th, of last year. Rodriguez. There is a seal which says: Capitol of the Province of Bulacan, Petty Governor of San Miguel. Don Jose Mercado having stated in the return to the demand which was made upon him that the title deed of ownership which was issued to him covering a parcel of land in Sibul has been for sometime in the possession of the purchaser of said land, and not having caused the name of the latter to appear, you will require the said Mercado to state whom this purchaser may be, and after the same thus appears you will require of the said purchaser the prompt production of the aforesaid title deed, transmitting the same to this government in order that what is required by his excellency the Governor General of these islands in the superior decree of the 15th instant, published in the Gazette No. 77 of the 15th instant, may have fulfilled effect. Return together with the proceedings which are had by virtue hereof. Bulacan, March 27, 1886. Rodriguez. Tribunal of San Miguel, March 29, 1886. Order, Keep, fulfill and execute what is required in the preceding order of the Alcalde Mayor, governor of this province, and for that purpose order the appearance of Jose Mercado in order that the latter may state who was the purchaser of the parcel of land with title deed of ownership which was issued to him, and as soon as same appears require of said purchaser the prompt production of the said title deed, transmitting the
104 same to the government of this province. And of all that is done transmit return with these proceedings. Thus the Acting Petty Governor ordered and signed, as we certify. What is within parenthesis does not stand. Potenciano Buencamino. Mariano Juliano, Limbano Baltasar—noted—order for the appearance of Jose Mercado by virtue of what is required in the foregoing order. We produce the same in San Miguel, March 29, 1886, as we certify. Mariano Juliano, Limbano Baltasar. We certify that this 4th day of April, 1886, the appearance of Jose Mercado was ordered anew, as we certify. Mariano Juliano, Limbano Baltasar. Appearance. San Miguel, April 5, 1886. There appeared before the Petty Governor the constable of Sibul stating that Don Jose Mercado is absent in the Province of Nueva Ecija seeking his daily subsistence,

and that for this reason the date of his return is unknown. Thus he stated and did not sign because he stated that he did not know how, and I the Petty Governor did so. To all of which we certify, Buencamino-Mariano Juliano, Limbano Baltasar. Tribunal of San Miguel, April 5, 1886. Order. In view of the foregoing appearance in which the return of Jose Mercado is shown to be unknown, and in order that the fulfillment of the preceding order may not suffer delay, let the same be transmitted with these proceedings to the government of this province as is ordered; so the Petty Governor ordered and signed. To which we certify. Potenciano Buencamino, Mariano Juliano Limbano Baltasar. Note—These proceedings are transmitted to the government of this province and the same consist of three valid pages including this. We make return hereof in San Miguel, April 5, 1886. To which we certify:
105 Mariano Juliano, Limbano Baltasar—this is a copy of the original record which is on file in this government. Bulacan, June 18, 1889. P. S. Virgilio Guajardo. Rubric. There is a seal which says: Civil Government of the Province of Bulacan. This is a copy. A. Leon. There is a seal which says: General Inspection of Health and Sanitation, Philippines.

Petty Governor of San Miguel having seen what is stated and the result of the proceedings apprised by you and transmitted to this government under date of August 28th, last, with reference to the demand for the title deed of ownership of a parcel of land in Sibul which was granted on September 25th, October 19th and November 9th, 1886, respectively, to Alejandro Hernandez, parochial curate of San Miguel, and to Jose Mercado, that he should state the person and the name to whom he claims he sold the land referred to and delivered the title deed thereof, you will exact of said purchaser the original title deed referred to. You will also make known to Regino Pengson that the title deed which is demanded of him does not appear in the government of this province nor in the proceedings relative thereto, as he states in his notification. Wherefore you will exact of said Pengson the aforesaid title deed and you will transmit the same to this government in the shortest possible time in order to annex the same to the corresponding record which must be transmitted to the superior authority, and the result of your proceedings you will cause to appear in returns drawn for the purpose and once terminated you will transmit the same to this government for the proper effects, acknowledging to me receipt of the present communication. Bulacan, October 17, 1890. To the Petty Governor
106 of San Miguel—In a communication dated the 17th instant there was stated to you by this government the following—insert communication—And whereas up to the present time you have not fulfilled what is ordered of you in said communication, notwithstanding the fact that it was required to be in the shortest possible time; neither have you acknowledged receipt of said communication, as is required. You are therefore threatened with a fine of twenty pesos if you do not fulfill in the shortest possible time what is required of you. Acknowledge receipt of the present communication. Bulacan, October 29, 1890.

To the Civil Governor. I have received your honorable order of the 29th instant requiring the fulfillment of that of the 17th received on the 20th, and I should state to your honor that it has not been possible for me to fulfill the same properly because the wife of the deceased Regino Pengson, who possesses the title deed of ownership of a parcel of land of the latter in Sibul, is at present absent on personal business in the Province of Nueva Ecija, and that she will return on the 1st day of November, at which time, at the first opportunity I will transmit to your honor the record which I am forming in the matter. God guard you many years. Tribunal of San Miguel, October 30, 1890. Emiliano Tecson. There is a seal on the margin which says: Province of Bulacan, San Miguel: and another which says: Civil Government of Bulacan, November 1st, 1890. Noted. Chief Clerk No. 4. Attached to the record, Torija Escrich.

To the Civil Governor: In compliance with your honorable order of the 17th inst., I have the honor to inform you that having ordered the appearance of Balvina Mendoza and Juana de Jesus because of the death of their spouses, Regino Pengson and
107 Jose Mercado, and having exacted of them the title deeds of the lands to which the aforesaid order of your honor refers, they stated that they did not have the same for the reasons which are set forth in the annexed proceedings—correction Balvino-stands —God guard your honor many years. Tribunal of San Miguel de Mayumo, October 31, 1890. Emeliano Tecson. There is a stamp on the margin which says: Province of Bulacan, San Miguel; and another which says: Civil Government of Bulacan, Nov. 1st, 1890— Noted Department No. 3, attached to the record, Torija Escrich. To the Governor of this Province of Bulacan—this is a copy—

Year 1890. Province of Bulacan, Pueblo of San Miguel. Gubernatorial proceedings referring to the titles of ownership of lands in Sibul of Don Jose Mercado and Don Regino Pengson. Teniente primero, acting Petty Governor, Don Emeliano Tecson. Attesting witnesses, Jose Santos, Ignacio Sayo.

Tribunal of San Miguel, October 20, 1890. Order:—Having received this day the order of the Civil Governor of the 17th instant requiring that there be taken up the title deeds which were granted to Jose Mercado and Regino Pengson for lands in Sibul on November 9th and October 19th, respectively, order the appearance of the latter and notify the former that he should state the person and name to whom he claims to have sold his land and delivered his title deed therefor, and exact from said purchaser the aforesaid title deed; and with respect to Regino Pengson do the same with the required notification, and when terminated transmit this record with the title deeds that were taken up to the Civil Governor who demands the same. Ordered and signed by said acting Petty Governor to which we certify. Emeliano Tecson, Jose Santos, Ignacio Sayo.
108 There is a seal in the margin which says: Province of Bulacan, San Miguel.

Note. The appearance of Jose Mercado and Regino Pengson has been ordered. To this we make return in San Miguel de Mayumo

on October 20, 1890. To which we certify. Jose Santos, Ignacio Sayo.

Appearance of the official messenger. We certify that on this 23rd day of October, 1890, there appeared the official messenger, Hilario Ras Teodoro, who states that according to the results of the investigations made by him, the individuals Jose Mercado and Regino Pengson have died. We make return hereof and sign with the official messenger. To all of which we certify. Hilario Teodoro, Jose Santos, Ignacio Sayo.

Tribunal of San Miguel, October 24, 1890. Order. In view of the foregoing return, let there be ordered the appearance of the respective spouses of Jose Mercado and Regino Pengson for the purposes required in the order which appears above. Ordered and signed by the Petty Governor. To which we certify. Emeliano Tecson, Jose Santos Ignacio Sayo. Note. The appearance of the respective spouses of Jose Mercado and Regino Pengson has been ordered. We make return thereof at San Miguel de Mayumo, October 24, 1890. To which we certify. Jose Santos, Ignacio Sayo.

Appearance of Juana de Jesus, spouse of deceased Jose Mercado, in the tribunal of San Miguel de Mayumo, October 27, 1890. Before the Petty Governor and the attesting witnesses there appeared Juana de Jesus, spouse of the deceased Jose Mercado, and by means of an interpreter she was required to state the name of the person to whom her said spouse sold the land covered by the title deed which
109 was granted him on November 9th, 1886, which land is in the barrio of Sibul, and having been duly informed she stated that by reason of litigation having been commenced concerning said lands her said spouse delivered said title deed to the deceased Spaniard, Juan Roura, who was a resident of this pueblo and who, in the name of the former, had charge of the affair. That therefore the said title deed should be found in the possession of Maria Roura, the daughter of the said Don Juan, as heir of the latter. This she stated and did not sign because she said that she did not know how, and Hilario R. Teodoro, of this pueblo, did so at her request, signing after the petty governor. To which we certify. Tecson, Hilario Ras Teodoro, Jose Santos, Ignacio Sayo.

Tribunal of San Miguel, October 27, 1890. Order. Let Maria Roura be ordered to deliver in this tribunal the title deed which was granted October 19th, 1886, to Jose Mercado for a parcel of land in Sibul, and which was delivered by the latter to her father, Juan Roura. Ordered and signed by the Acting Petty Governor. To which we certify. Emeliano Tecson, Jose Santos, Ignacio Sayo.

Note.—Maria Roura has been ordered to deliver in this tribunal the title deed referred to in the preceding order. We make return thereof in San Miguel de Mayumo October 27, 1890. To which we certify. Jose Santos, Ignacio Sayo.

We Annex hereinafter the answer of Maria Roura to the foregoing order, in which she states that she is ignorant at the present time of the whereabouts of the title deed to the land of Jose Mercado. We make return hereof in San Miguel de Mayumo, October 29, 1890. To which we certify. Jose Santos, Ignacio Sayo.

110 The Petty Governor in answer to the order which you were pleased to send me for the delivery in this tribunal of the title deed of a parcel of land situate in Sibul which Jose Mercado had sold in absolute sale to my deceased father, as is stated in the order signed by you. I would state that during the lifetime of my said father I heard said title deed of Sibul mentioned but at the present time I am ignorant of its whereabouts. That is all that I can say. Maria Roura. San Miguel, October 29, 1890. Let this be annexed to the corresponding record—Tecson and a seal which says: Province of Bulacan, San Miguel.

Appearance of Doña Balbina Mendoza, spouse of the deceased Regino Pengson. In the tribunal of San Miguel de Mayumo, October 30, 1890, before the Acting Petty Governor and attesting witnesses appeared Doña Balbina Mendoza, and by means of an interpreter she was notified that the title deed which was demanded of her deceased husband, Regino Pengson, covering lands of the latter in Sibul, granted on November 9, 1886, does not appear in the government of this province, nor in the record referred to, and that, therefore, she was required to deliver said title deed to the Acting Petty Governor, and being duly informed, she stated that said title deed is not in her possession, but she remembers that in the lifetime of her said husband, he said that his attorneys, Sres. Fores and Felipe Buencamino, who had charge of the proceedings which were pending concerning said land, had the said title deed. This she stated and did not sign because she said that she did not know how, and Don Julian Maniquis, of this pueblo, did so at her request, together with the Acting Petty Governor. To all of which we certify. Tecson. Julian Maniquis—Jose Santos, Igancio Sayo.

111 Note.—These proceedings were transmitted to the Civil Governor of this province and consist of five valid pages including this. We make return thereof. San Miguel de Mayumo, October 31, 1890. To which we certify. Jose Santos. Igancio Sayo.

This is a copy of the original record which appears in this government, which is transmitted with the communication of this date, to his excellency the Director General of Civil Administration. Bulacan, December 26, 1890. Signed Saturnino Soriano.

I certify that the foregoing copy is taken literally from its original, which is on file in this office, and I seal and sign the same in Manila, December 14, 1904. M. de Yriarte, Chief of the Bureau of Archives, Ex-officio Notary Public. Seal Bureau of Archives, Philippines.

112 EXHIBIT 2 OF THE OPPONENT.

Ministry of Foreign Colonies. No. 612. Most Excellent Sir: Having seen the official letter of your general government No. 282, of June 27th, 1891, to which is attached a copy of the proceedings for the installation of the sanitarium of Sibul in the Pueblo of San Miguel de Mayumo, Province of Bulacan, and it appearing that the satisfactory analysis of the mineral medicinal waters of Sibul made by the special commission presided over by the Chief Engineer of

Mines having become known to the General Inspection of Health and Sanitation, the latter approached your general government requesting the erection of a sanitarium at said point subsidized by the state, should be turned over for its exploitation to private industry and the idea exploited, it was required that investigation should be made whether the aforesaid spring and the lands bordering thereon were the property of the state, and it appearing that the Civil Government of the Province of Bulacan, upon rendering the report which was required concerning the ownership of the lands, transmitted a copy of the record, in which it appears that the General Directorate of Civil Administration had decreed a composition of lands issuing three title deeds of ownership in the sanitarium of Sibul under dates of September 25th, October 19th and November 9th, 1885, and that these grants had been annulled by the General Government in a decree published in the Gazette of Manila on March 5, 1886, and it appearing that on the 19th of February, 1890, the Inspection of Health and Sanitation, considering that the ownership of the State was proved, consulted anew as to whether the cession of the spring to private industry and the subsidy of the construction of the sanitarium should be proceeded with, and
113 transmitted for the report of the Council of Administration.

The latter rendered the same effect although said Council considered that it was necessary to determine with greater clearness the right of ownership of the State, and it appearing that your General Government in conformity with said report again ordered the Civil Governor of Bulacan to proceed to formulate a proceeding to qualify the right of ownership of the state in which, in addition to the confirmation of the facts which are approved in the first record, there appears proved the free use of the springs without opposition or claim of anyone; and it appearing that on March 15, 1886, the General Directorate of Civil Administration ordered that there be made the plans, projects and whatever technical work might be necessary for the construction of the sanitarium, and that approved by the Gen-ral Government, the execution of the work was ordered by the system of contract, concerning which orders the decree "noted" was made by this Ministry. And it appearing that this Ministry, having asked some years later concerning the status of the works of the sanitarium, your General Government, in a telegram of December 7, 1894, stated that the same had not yet been commenced. And it appearing from the record transmitted by your General Government under date of February 16, last, that the Inspection of Health and Sanitation again raises the question of whether it is proper to construct the sanitarium at the expense of the State, or merely to deliver its exploitation to private industry in view of the fact that by the learned analytic study made by the Inspector General of Mines, it may be stated that the principal component minerals of the spring, such as nitrogen, ozygen and sulphhydric acid, to which the aforesaid waters owed their principal beneficial properties, have undergone an appreciable diminution
114 although the causes which have produced the phenomenon do not clearly appear: with which report the Directorate of

Civil Administration of your islands concurs, and considering that in spite of the favorable reports which appear in the record, and even though the construction of the sanitarium might be beneficial for the public, the advantage of constructing the sanitarium at the expense of the State in order to sell it afterwards to private industry does not appear established, and considering that there does not exist any credit in the budget applicable to this purpose, and that the present state of the treasury of the Philippines does not permit the making of other expenditures than those which may be strictly indispensible, and considering that it may result to be imprudent to invest the funds of the treasury in the construction of a sanitarium whose spring has suffered appreciable diminution in its principal mineral components, a change which is sufficient to produce important differences in the therapeutic action of said mineral waters, and considering finally that the fact that the State does not construct the sanitarium, either directly or by subsidies, does not require that private industry be deprived of constructing the same and exploiting the spring, and that in such case the most advantageous proceedure is to sell by public auction the spring and appurtenant lands. His Majesty the King (Whom God guard) and in his name the Queen Regent of the Kingdom. After having heard the Council of the Philippines and possessions of the Gulf of Guinea and the Department of Exchequer and Foreign Colonies and that of State has been pleased to determine not to proceed to construct the sanitarium of Sibul at the expense of the treasury of these Islands, nor of its local funds; that expert appraisal having first been made the
115 spring and the appurtenant lands belonging to the State be sold by means of public auction subject to the set of conditions which the General Directorate of Civil Administration may form, the grantee submitting for the exploitation thereof to the requirements set forth in the provisional regulations for mineral medicinal waters approved by Royal Order of February 27, 1890; it being at the same time the will of His Majesty that this resolution be published in full in the gazette of this capital, and in that of your capital. By Royal Order of State. This to your excellency for your information and the opportune effects. God guard your excellency many years.

Madrid, September 7, 1895.

TOMAS CASTELLANO.

To the Governor General of the Philippines.

Manila, October 19, 1895.—Fulfill, publish and pass to the General Directorate of Civil Administration for the proper effects. The General in charge of the office Echaluce. Gazette of Manila, October 29, 1895, page 1237.

116 That on the 21st day of February, 1905, the Court of Land Registration of the Philippine Islands gave and made its decision in said proceeding in the following terms, to-wit:

Decision.

There is sought by the petitioners the award and registration of the land described in the petition, with an area of 2776.87 square meters, situated in the Barrio of Sibul, Municipality of San Miguel de Mayumo, Province of Bulacan, within which is found located the spring of mineral medicinal waters called Sibul.

The representatives of the Insular Government are opposed to the registration sought, urging that the land is of the public domain and as such is not susceptible of private appropriation because it is found under the control of the Insular Government.

It is a fact established by the documentary proofs adduced by both parties, that the land in controversy, or part thereof, has been awarded, under dates of November 9th, October 19th and September 25th, 1885, to Regino Pengson, to Jose Mercado, and to the Parochial Curate of San Miguel de Mayumo by means of title deeds of ownership issued respectively on the aforesaid dates by the defunct General Directorate of Civil Administration of these islands in favor of those three separate grantees.

It is also an indisputable fact, which results from the same documentary evidence, that Regino Pengson, one of the three aforesaid grantees, instituted a proceeding before the said General Directorate of Civil Administration availing himself of his right and title obtained to the land awarded to the exclusion (as is to be
117 presumed from the nature of the resolution made) of the other two holders of similar titles, in which proceeding a resolution was dedicated on March 5, 1886, by the General Government, declaring null the three titles of ownership above referred to, and all which was done in the respective proceedings, and declaring that the spring of mineral medicinal waters of Sibul, included in two of the parcels of land to which those title deeds refer is of the public domain and therefore the property of the State. Such being the literal phrases used in said resolution.

In the transmission of the resolution from its mandatory part as above by the General Directorate of Civil Administration to the Civil Government of the Province of Bulacan on March 15, 1886, it was ordered that the entries of the aforesaid title deeds be annulled and that the same be demanded of the interested parties but the delivery thereof was not obtained by the local authority of San Miguel de Mayumo entrusted with the execution of the order because to the demands made answer was given by the Parochial Curate of San Miguel de Mayumo on March 22, 1886, that he had mislaid his title deed by Jose Mercado on the 23rd of the same month and year, that his title deed of ownership he delivered to the person to whom he sold the land sometime before; and by Regino Pengson, on the same date, that his title deed was attached to the record of the proceeding which he instituted in the said Directorate.

It is unnecessary to deal at length in the present decision with the question of whether the General Government, in dictating the resolution referred to, acted in the exercise of its regulated faculties con-

forming to the provisions of the law, or a regulation or other
118 administrative precept, or within its discretionary powers.

Be it the one or the other it is beyond all doubt that the interested parties, against whom the declaration of nullity of their respective titles was made, did not interpose the opportune recourse of appeal, either within or after the period fixed in Article 28 of Royal Decree, the organic law of administrative procedure in the affairs of foreign colonies, dictated September 21, 1888, and applied to these Islands by Royal Decree of the 23rd of the same month and year, if it be considered that the administration has exercised a discretionary power, nor the contentious-administrative recourse established in Article 7 of the law of contentious-administrative matters of September 13, 1888, applied to these islands by Royal Decree of November 23rd of the same year, if the aforesaid resolution be deemed to have been made by the General Government within its regulated faculties.

So that there is in question a resolution of the administration which is final not only by the lapse of the period fixed for obtaining its revocation by way of executive or contentious-administrative channels, as the case may be, but also finally by the consent of the interested parties whom it affects, among them the person from whom the present petitioners derive their right.

The title deed of ownership issued by the General Directorate of Civil Administration on October 19, 1885, in favor of Jose Mercado, from whom the immediate predecessor in interest of the petitioners, derives his right, adduced as one of the documentary proofs, is null
by reason of the declaration made by the General Government
119 at the suggestion of the Directorate itself: what is more, it ought not to exist in the possession of the petitioners if delivery had been made thereof to the local authority of the Pueblo of San Miguel de Mayumo when demand was made, as was ordered in the resolution of said government, dated March 5, 1886.

Therefore, in no manner can it have any legal effect in this proceeding as proof of an award in favor of Jose Mercado, which, if it existed, was afterwards annulled by the express and final declaration of the defunct General Government.

It has been alleged, nevertheless, by the counsel for the petitioners that the General Government did not act within its attributes in annulling the grant made to Jose Mercado, from whom said petitioners derived their right, without hearing the interested party, and without the corresponding return of the sum which the government received as the price of the land, which question ought to have been heard before the courts of justice. Undoubtedly, in the judgment of this court, the counsel for the petitioners started from a false position in reasoning in the manner set forth. They erroneously believe that in the grant referred to as regards Jose Mercado there was a contract of sale between the government and the grantee concerning the land in question.

If a sale had been the origin of the award, if this were a question relating to a parcel of uncultivated land denounced in order to be acquired by title for a consideration, the question raised by the coun-

sel for the petitioners could have been considered in the sense which they claim. Of course it could be admitted that the government as a contracting party in the capacity as vendor lacked the power
120 to declare by itself and for itself the nullity of a title which it itself has issued to a parcel of land which it sold, and to take cognizance of a question the determination of which is in the exclusive jurisdiction of the courts of justice, and of this court if the question be raised as a previous question related to the petition for registration.

But the origin of the acquisition is very different: it is the right of prescription recognized in favor of the interested party, Jose Mercado, according to the title deed presented by the petitioners, hence the composition was gratuitous in accordance with Articles 4 and 5 of the regulations of June 25, 1880, and not after a consideration in accordance with article 6, No. 5 of said regulation, the grantee having deposited with the government for the two parcels described in the title deed the sum of 2.31 pesos, not as a price for the lands, but simply the 10 per cent on the assessment of the land for the expenses of survey and measurement made by a deputy of Unreclaimed Lands, and the fees for the title deed established by local provisions then in force, as is stated in the title deed and in document marked Exhibit H offered by the petitioners.

The late Spanish Government, in the case here in question, did not sell any land to Jose Mercado and did not receive from the latter any sum as the price thereof. It did not do more than recognize the right which Jose Mercado invoked in and to the land based upon prescription, and by virtue of its eminent domain, and in conformity with Royal Decree of June 25, 1880, approving the regulations above cited, it awarded gratuitously the land to him who already had the character of a proprietor thereof, in accordance with
121 the laws of the Indies, and issued to him the title deed in question.

But by reason of the claim by Regino Pengson to make valid and obtain recognition for the title issued in his favor by the same government, and to the same land or part thereof at least, including the Sibul Spring, it was discovered in the proceedings which were commenced for the purpose that the land where the spring is located was awarded not only to Mercado but also to the claimant Pengson, all of which occurred by reason of the errors committed by the acting deputy of Unreclaimed Lands who made the measurement of the lands within an insignificant lapse of time, giving rise to the fact that titles had been issued not only in favor of the above named, but also in the name of the Parish Priest, Hernandez, to lands whose description made by the expert and set forth in the title deeds not in accordance with the true description which the lands in the field showed, there resulted the inclusion of the spring not only in the title deed of Mercado, whose successor in interest, the present petitioners, claim the said spring under, but also in the title deed of Pengson, who before that time made claim in the administrative proceeding above referred to, and his heir renewed the same in this

proceeding commenced in this court, although it was later withdrawn.

These two titles, issued to one parcel alone of land claimed in the proceeding in which the declaration of nullity was made by the executive authority, presupposes in both interested parties an equal right recognized in both, which right if it is that of prescription, offers an absurdity because possession, as one of its essential elements, cannot possibly be recognized in both, there being no case of
122 undivided interests in their possession not as a fact which is not the sole origin of prescription provided it be compounded by the other necessary elements, but not even as a right for the purposes of such prescription. If prescription was recognized in favor of Mercado, as the gratuitous character of the award made to him shows, and simple possession in favor of Pengson, unaccompanied by any just title, let it be supposed, since his title deed is not available at hand, and for that reason the land had been awarded to him by composition for consideration in accordance with Article 6, No. 5 of said Royal Decree of June 25, 1880, the Government undoubtedly proceeded through an unavoidable error in view of the mistaken description of the expert, without which it could not have issued the said titles, unless there had been previously determined, either executively or judicially, the conflict of right which had arisen between both claimants.

When the government recognized its error by reason of the claim of Pengson it retracted its decree declaring null, not only the titles issued, but also the proceedings instituted previous to their issuance, at the same time discharging the experts who made the measurements, although with the reservation, of which none of the parties interested have availed themselves, that they might institute anew proceedings for composition of the lands which they claimed.

Under such circumstances did the government act within its attributes?

In the opinion of this court the government, in proceeding to make the declaration of nullity, exercised a power which Article
10 of the said Royal Decree of June 25, 1880, tacitly con-
123 ferred upon it. The literal text thereof is as follows:

"Whenever in any property of private ownership there appears an exorbitant injury to the state, the administration may move the survey of the same and oblige the proprietor to proceed to the composition or the purchase of the land usurped as the case may be. If the proprietor does not agree to do so the State will take possession of that part which proves to be usurped, to sell the same at public auction as is determined in Article 8, reserving to the interested party the right to avail himself of the recourses which follow in accordance with law."

If in accordance with the article quoted in the case in which exhorbitant injury for the state appears in any private property which has been submitted to composition the administration for itself and by itself can take possession of the usurped land when the private party does not consent to acquire it by composition or by purchase, as the case might be, in order to sell the same at public auction, then

it is easy to understand the faculty which the said Royal Decree confers upon the administration to annul in the present case and at the instance of Pengson as an injured party, titles issued by manifest error recognized in time, without prejudice, of course, to the rights of the interested parties to have recourse to the ordinary remedy, which is the judicial, after having exhausted the executive remedy. The meaning of said article was made clear in the opinion of this court by the regulations for the sale of uncultivated lands of the State in the Philippines, approved by Royal Decree of January 26, 1889, dictated at the suggestion of the Ministry of Foreign Colonies in accord with the Council of Ministers, and after hearing the full Council of State. In the eighth article thereof it is provided literally as follows:

"In no case shall there be admitted by the judicial authori-
124 ties any complaint against the resolutions of the Civil Administration concerning sales of royal lands unless the complainant presents documents which prove the fact that he has exhausted the administrative remedy. After having terminated the administrative proceedings, and the award has been made, those who consider themselves prejudiced may make their claims judicially against the administration, but in no case against the proprietors of the land."

The petitioners in this proceeding not only did not exhaust the administrative remedy by following the corresponding recourses against the resolution of nullity made by the late general government, whether or not the latter acted within its powers, but neither did they attempt any claim against the government judicially from the 29th day of October, 1890, on which date Maria Roura was required to deliver the title deed as the daughter and heir of Juan Roura, purchaser of the land awarded to Jose Mercado, and at present one of the petitioners, answered to the Petty Governor of San Miguel de Mayumo that in the lifetime of her father she had heard the title deed spoken of, but that at that time she was ignorant of the whereabouts of the same; furthermore, not only the petitioners, but their predecessors in interest, the possessors of the other two title deeds declared null, have failed to exercise, not only since the date of the demand upon Maria Roura, October 29, 1890, but since March, 1886, the month in which the three grantees were requested to return their respective titles, any act of possession, as may be gathered from the report issued in 1890 by the Petty Governor and the commune of municipal authorities of the Pueblo of San Miguel de Mayumo, required by the civil government of Bulacan in order to ascertain the person or persons who had at any time alleged rights to the lands of the Sanitarium of Sibul.

Although the present proceeding has been instituted it
125 has not been for the purpose of discussing the lack of authority of the late Spanish government to declare null the title in question, or the impropriety and illegality of its resolution in case the resolution had been dictated within its powers as a fundamental question related to the award and registration of the land which is sought. Proof of this is evident in the fact that in the

third paragraph of the petition it is declared under oath that there is no encumbrance upon the land and that no person exists who is believed to have a right thereto, whereas it clearly is known to the petitioners by the documents which they possess and offered at the trial, that the said Spanish government not only annulled the title, but also took the necessary steps for the establishment of the sanitarium upon the land, which is declared in resolution to be of the public domain.

The petitioners limited themselves, prior to the opportune opposition of the present Insular Government as successor to the rights of the prior government through the Treaty of Paris, to offer to the consideration of the Court the public deed of sale of the land executed by Jose Mercado in favor of Juan Roura, the father of the petitioner, on May 24, 1885, before the former notary of Bulacan.

The public deed just mentioned, taken into account from the juridical point of view, together with the proofs adduced by both parties, has no probative force in support of the right which the petitioners claim.

The nullity of the title of the vendor having been declared by a decree of the General Government, and consented to by the purchaser first, and by his successors afterwards, the validity of
126 the contract of sale made in said deed falls of its own weight.

Although this sale be deemed hypothetically to be a just title for the purposes of prescription the latter could not have been perfected because there is not present either good faith nor possession.

The former is not present because the declaration of nullity of the title deed came to the knowledge of the purchaser and of his successors, who, therefore, could not invoke the provisions of Article 442 of the Civil Code, according to which he who succeeds by an hereditary title shall not suffer the consequences of a faulty possession of the testator unless it is proven that he had knowledge of the defects which affected it.

Although at the beginning good faith in the possession existed on the part of the purchaser, it lost this character ever since there came to the knowledge of the latter in the first place, and his heirs afterwards, the declaration of nullity of the title of the vendor. Good faith is necessary during all the time of prescription. It is not sufficient that it exist at the beginning thereof. Article 1951 Civil Code.

The second element, of possession, is lacking because it has not been proved that there had been exercised, either before or after the declaration of nullity of the title, any possessory act on the part of the petitioners or of their predecessor.

All the effort of counsel for the petitioners consisted, after the opposition of the insular government was known, in proving that the former administration did not act within its powers in declaring the nullity of the title deed offered.

127 The title issued by the former General Directorate of Civil Administration of these islands in favor of Jose Mercado, being null and null the deed of sale which the latter executed in

favor of Juan Roura, the petitioners have not acquired from the latter by hereditary succession any right of ownership in the land which is the subject of the proceeding.

The opposition made by the representatives of the Insular Government is well taken. The award and registration sought by the petitioners, Maria and Juana Roura is disallowed without express ruling as to costs.

Manila, February 21st, 1905.

(Signed) S. DEL ROSARIO, *Judge.*

(There is a seal.)

A true copy.

(Sgd.) J. R. WILSON,
Clerk of the Court.

That thereafter, to-wit, on the 13th day of March, 1905, the petitioners duly excepted to the foregoing decision of the Court of Land Registration. That on said 13th day of March, 1905, the said petitioners moved the said Court of Land Registration to revoke its said judgment and to grant a new trial in said proceeding on the grounds, first, that the decision is contrary to law, and second, that the evidence did not support the said decision.

That thereafter, to-wit, on the 7th day of April, 1905, the motion for a new trial herein was denied by said Court of Land Registration.

That thereafter, to-wit on the 15th day of April, 1905, the petitioners caused all of the foregoing proceedings to duly appear by way of a bill of exceptions, duly certified as such by Simplicio del Rosario, Judge of the Court of Land Registration of the Philippine Islands, on the 24th day of April, 1905.

128 That thereafter, to-wit, on the 25th day of April, 1905, said proceedings and bill of exceptions were duly filed in the Supreme Court of the Philippine Islands, and having been duly considered by said Supreme Court of the Philippine Islands, the latter made and entered its decision therein on the 22nd day of March, 1907, in the following terms, to-wit:

Decision.

Without prejudice to expressing later the grounds for this decision, we hereby affirm the judgment of the Court of Land Registration, without special ruling concerning the costs of this instance. After the expiration of 20 days from the notification of this decision let judgment be made in accordance with this order, and 10 days thereafter return the record to the trial court for the purposes which may arise in law.

(Signed) CAYETAÑO S. ARELLANO.
FLORENTINO TORRES.
VICTORINO MAPA.
E. FINLEY JOHNSON.
JAMES F. TRACEY.
CHARLES A. WILLARD.

That thereafter, to-wit, on the 5th day of April, 1907, the plaintiffs in error duly filed in said Supreme Court of the Philippine Islands, by a notice in writing, a motion for the rehearing of said cause.

That thereafter, to-wit, on the 25th day of July, 1907, said motion for a new trial was denied by said Supreme Court.

And on said 25th day of July the Supreme Court made and entered its amplified decision therein in the words and figures following, to-wit:

129 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

MARIA ROURA and JUANA ROURA, Plaintiffs and Appellants,
vs.
THE INSULAR GOVERNMENT, Defendant and Appellee.

Registry of Lands July 25, 1907; Gen. Register No. 2646; Book of Decisions 12, 1907.

Heard Oct. 2, 1906.

Present: The Hon. Chief Justice, and Justices Torres, Mapa, Johnson, Carson, Willard, Tracey.

Decision.

The plaintiff sought the inscription and decree of title of ownership in and to a parcel of land, more than two thousand square meters in extent, situated in the barrio of Sibul, of the township (pueblo) of San Miguel de Mayumo, Province of Bulacan.

The Insular Government filed an opposition, on the ground that it considered the land to be unconveyed public domain.

The plaintiffs allege, and prove, by means of the will and testament of their father, Juan Roura, their hereditary title, by virtue of which they have continued in possession of the land acquired by their father.

This possession was acquired by their father, Juan Roura, by virtue of a title of purchase and sale appearing in a public instrument, executed in his favor by Jose Mercado, the former owner of the land, on March 24, 1885.

And Jose Mercado acquired the land by virtue of composition proceedings (composicion) with the Government, which executed title in his favor on October 19, 1885.

130 It results, therefore, that although sold before obtaining the title thereto, the land has been acquired by Juan Roura from him who acquired it from the Government by virtue of a just title.—that of composition—authorized by various laws of the Indies and regulated by the Royal Decree of June 25, 1880.

But, according to the following conclusions of the judgment appealed from, it happens that:

"It is a fact, demonstrated by the documentary proofs adduced by both parties, that the land in question, or a part thereof, has been adjudicated, under dates of November 9, October 19, and September 25, 1885, to Regino Pensson, to Jose Mercado, and to the Parochial Curate of San Miguel de Mayumo by means of titles of ownership, issued on the respective dates mentioned, by the defunct Directorate of Civil Administration of these Islands, in favor of the said three district grantees.

"It is also an indisputable fact, as appears from the documentary proofs themselves, that Regino Pengson, one of the three grantees referred to, commenced a proceeding before the said General Directorate of Civil Administration, availing himself of his right and title obtained to the land, awarded to the exclusion (as is to be presumed from the purport of the resolution made) of the other two holders of similar titles, in which proceeding a resolution was made by the General Government on March 5th, 1886, declaring null the three titles of ownership above referred to and all the proceedings had in the corresponding proceedings, and that the minero-medicinal springs of Sibul, included within two of the parcels of land covered by those titles, is a part of the public domain and therefore the property of the Government, such being the literal phrases employed in the aforesaid resolution" (Bill of Ex., p. 6).

It results, therefore, that the title of ownership by composition with the Spanish Government, issued in favor of José Mercado on October 19, 1885, was declared null by the General Government of the Philippine Islands on March 5, 1886.

This resolution was transmitted to the Civil Government of Bulacan on the 15th of the same month and year, with an order that the entries of said title deeds be annulled and that said title deeds be taken up from the hands of the interested parties.

131 This last order was entrusted to the local authorities of San Miguel de Mayumo, who demanded of the grantees the return and delivery of their respective title deeds; but they answered: The Parochial Curate of San Miguel de Mayumo on March 22, 1886, that he had misplaced his title-deed; José Mercado, on the 23rd of said month and year, that he had delivered his title deed to the person to whom he had sold the land sometime before; and Regino Pengson, on the same date, that his title deed was filed in the proceedings which he had commenced in the said General Directorate of Civil Administration (Bill of Ex., pp. 6 & 7).

It results, therefore, that Jose Mercado had knowledge, since the 23rd of March, 1886, or one day before the completion of a year from the time when he made the sale of the land to Juan Roura, on March 24th, 1885, that the composition title issued in his favor by the General Directorate of Civil Administration on October 19th, 1885, had been declared null by the General Government of the Islands on March 5, 1886, and that by virtue thereof he had been required to return his title deed to the Government.

The composition title granted by the Government to Jose Mercado

was gratuitous, and he has only paid therefor two pesos and thirty-one centimos as the costs for measuring and surveying the lands and fees for the issuance of the title deed.

Likewise it results, according to other conclusions of the judgment appealed from:

"That by reason of the claim presented by Regino Pengson to make valid and effective the title issued in his favor by the Government itself, and to the same parcel of land or at least part thereof,
132 including the Sibul Springs, it became apparent in the proceeding commenced for the purpose, that the land where the spring is located was adjudicated not only to Mercado, but also to the petitioner Pengson, which occurred through errors committed by the acting assistant of unreclaimed lands, who made the survey of the lands within an insignificant interval of time, giving rise to the issuance of titles, not only in favor of the parties named, but also in the name of the parish priest Hernandez, to lands whose descriptions, made by an expert, and set forth in the title deeds, do not agree with those which the lands in the field show, resulting in the inclusion of the spring not only in the title of Mercado, whose successors in interest, the present petitioners, claim ownership of the said spring, but also in the title of Pengson who made claim thereto prior to that time in the administrative proceeding above referred to, and his heiress renewed the same in this proceeding in this court, although it was later withdrawn. * * *

The government, being aware of its error by reason of the claim of Pengson, revoked the action and declared null, not only the titles issued, but also the respective proceedings had for the issuance thereof, at the same time discharging the expert who made the surveys, although with the reservation (of which none of the interested parties has availed themselves) that they be permitted to move new composition proceedings for the lands which they claimed (Bill of Ex. pp. 9 & 10)."

And it results, finally, that Maria Roura herself, as the daughter and heiress of Juan Roura, the purchaser of the land adjudicated to Jose Mercado, one of the present petitioners, had been re-
133 quested on October 29, 1890, to deliver up the title deed, and "she answered to the Petty Governor (Gobernardorcillo) of San Miguel de Mayumo that in the lifetime of her father she heard the title deed spoken of, but she was not then aware of the whereabouts thereof" (Bill of Ex. p. 12).

In view of these facts and of the legal doctrines set forth in the decision of the Court of Land Registration:—"The title"—thus it concludes—"issued by the former General Directorate of Civil Administration of these Islands, in favor of Jose Mercado being null, and null the deed of sale of the land which the last named executed in favor of Juan Roura, the petitioners have not acquired from the latter by hereditary succession any right of ownership over the land which is the subject matter of this proceeding." And the court decreed that "the opposition interposed by the representative of the Insular Government is well taken. The award and registration sought by the petitioners Maria and Juana Roura is disallowed, without express ruling as to costs" (Bill of Ex. p. 11).

Against this judgment the appellants assign before us three errors of law.

I.

"The Court of Land Registration committed error in declaring null the composition title issued in favor of Jose Mercado on October 19, 1885, to the parcel of land whose registration is prayed for."

II.

"The Court of Land Registration likewise erred in declar-
134 ing null the public deed of sale, executed on March 4, 1885, by Jose Mercado in favor of Juan Roura, the predecessor in interest of the petitioners, of the aforesaid parcel of land."

III.

"The Court of Land Registration further erred in finding facts which have not been the subject of evidence at the hearing in order to deny the petitioners' actual possession of the land in controversy as well as that of their predecessors in interest."

I.

Nullity of the Composition Title.

1. This composition title was offered by the petitioners as evidence in their behalf. Its tenor is as follows:

"The general Directorate of Civil Administration of these Islands.—Whereas Jose Mercado has petitioned for composition with the government, of two parcels of land which he possesses in the jurisdiction of the pueblo of San Miguel de Mayumo, of the province of Bulacan, and whose location, extent, and boundaries are as follows: (the description follows); and whereas, by decree of this General Directorate, dated September 7th, 1885, the ownership of said lands has been adjudicated gratuitously to the interested party, in accordance with the prevailing provisions of law, payment being made to the Government of the sum of two pesos thirty-one centimos, for the corresponding legal fees, and the deposit thereof having been made, I issue the present title deed, in order that by virtue of the same Jose Mercado may be taken and had as the legitimate owner of the aforesaid parcels of land. And of this title note will be taken in the General Inspection of Unreclaimed Lands, and thereafter it will be presented to the Chief of the Province for its inscription in the register*ed* ordered to be opened by Circular of December 6, 1881, and to the end that the possession which becomes legalized by the present title deed may be published and ratified by posted notices and public criers.

Given at Manila this 19th day of October, of 1885.

(Signed) V. BARRANTES."

2. As evidence offered by the representative of the Government, there appears, in the trial record, the following decree of the

Governor General of these Islands of the date of March 5,
135 1886:

"General Directorate of Civil Administration Manila 15th of March, 1886. Account having been given, by this Bureau to the Most Excellent Governor General, of the proceedings moved by Jose Forés, representing Regino Pengson, claiming lands granted by composition in the barrio of Sibul of the pueblo of San Miguel de Mayumo, and

It appearing that not only the land granted the above mentioned Pengson, but also the lands granted to Jose Mercado and to the Parochial Curate of San Miguel, do not conform in location, area, or boundaries with those set forth in the title deeds, issued by this General Directorate, under dates of November 9th, *October 19th* and September 25th of last year, respectively, and that these discrepancies originate in errors committed by the expert appraiser of lands Jose Moreno, when he took action concerning said lands in the capacity of Acting Deputy of Unreclaimed Lands.—and

It appearing that the Sibul Spring has never been known as private property and is included in land which may have this character, but rather that those medicinal waters have been utilized without any obstacle or hindrance, not only by the residents of the pueblo but also by the general authorities, as is proved by a certificate of the municipal — of San Miguel de Mayumo, among other things, and is confirmed by unanimous and universal voice of the public.—and

It appearing that the General Inspection of Unreclaimed Lands and this General Directorate have been taken unawares by the aforesaid expert, by virtue of the measurements which he made, into the issuance (as they did issue) of composition titles of ownership of the lands bordering upon the Sibul Springs, by reason of which it might be believed that the spring is found included within one of them; and that the public and free zone, which all waters have and need for their enjoyment, had disappeared.—

Considering that the three proceedings aforementioned embrace a vice of nullity from their beginning, because the data which appear in the notes of survey and measurement of the lands are not correct, nor those in the plats which accompany the same, and as a consequence the titles issued do not define the lands as they really are.

Considering that the person responsible for this discrepancy is the expert Jose Moreno, who when called to explain the errors committed by him, has not done so satisfactorily,—errors all the more inexcusable in that he was dealing with parcels relatively small and contiguous, and which were surveyed and measured within an insignificant interval of time between one and another, giving rise to the suspicion that such errors were not caused solely by oversight or lack of zeal, but voluntarily and with knowledge of the inexactitudes which were set forth.—

And considering that, once proved, as it is, that the ownership of the medicinal waters of Sibul does not belong to a private party but to the State, it is necessary that the administration should assist in

constituting those establishments, that regimen and policy
136 which the culture of the country, hygiene, and even humanitarian sentiments, exact, contributing in this matter to the generalization and increase of the use of waters so salubrious.—

His Excellency the Governor General, in a decree of the 5th of the current month, has been pleased to decree as follows: 1st. It is declared that the spring of minero-medicinal waters of Sibul has always been of the public domain and consequently the property of the government.—2nd: The three titles of ownership, by composition of lands, issued by the General Directorate of Civil Administration on September 25, *October 19*, and November 9, 1885, become null and of no effect. Likewise there is annulled all the proceedings had in the respective proceedings, which may be instituted anew if the interested parties so petition.—3rd. Before proceeding with the new composition of these lands, the General Directorate of Civil Administration shall provide that an official of the Inspection of Public Works should plat and mark out whatever space may be necessary for a modest but decent sanitarium. The ground which may be utilized for this latter purpose shall be forthwith excluded from every composition without prejudice to the indemnities which may subsequently be granted if any private party should prove that land belonging to him has been occupied. The sanitarium shall be constructed immediately by the Administration as soon as the formalities prescribed for the purpose have been complied with.—and 4th. The title of Expert Appraiser of State Lands shall be taken away from Jose Moreno, and he becomes ineligible to exercise this profession and this proceeding shall be passed to the courts for the purposes of justice.—Barrantes."

"There is a stamp which says — Capital of the Province of Bulacan.—Petty Governor (Gobernadorcillo) of San Miguel—The General Directorate of Civil Administration of these Islands under date of 15th of the present month says to me the following: In the proceedings moved by Jose Forés, representing Regino Pengson, relative to the claim of lands granted to the latter by composition in the barrio of Sibul of the pueblo of S. Miguel de Mayumo of that province, His Excellency the Governor General, in an order of the 5th of the current month, which your Honor may see in detail in the Gazette of Manila, has been pleased to decree, among other things, the following:—It is declared that the spring of minero-medicinal waters of Sibul has always been of the public domain and consequently the property of the government. The three letters of ownership by composition of lands, issued by the General Directorate of Civil Admin. on September 25th, *October 19th* and November 9th, 1885, become null and of no effect. Likewise *it* was annulled all the proceedings had in the respective proceedings, which may be instituted anew if the interested parties so petition. Before proceeding with the new composition of these lands, the General Directorate of Civil Administration shall provide that an official of the Inspection of Public Works should plat and mark out whatever space may be necessary for a modest but decent sanitarium. The ground which

may be utilized for this latter purpose shall be forthwith
137 excluded from every composition without prejudice to the indemnities which may subsequently be granted if any private party should prove that land belonging to him has been occupied. The sanitarium shall be constructed immediately by the Administration as soon as the formalities prescribed for the purpose have been complied with.—All of which I communicate to your Honor for the fulfillment of this order in that part which relates to Your Honor, and in order that you be pleased to reclaim from the interested parties the aforesaid title deeds of ownership, and to remit the same to this Directorate as soon as you have the same in your possession, and to annul the entries of the said title deeds in the register thereof which is kept in your provincial government. And I transmit it to you for your knowledge and the corresponding effects, notifying you that, after informing yourself of the cited order dated on the 5th of the present month and published in full in the Gazette of yesterday, you shall reclaim from the interested parties the title deeds of ownership to which the above inserted superior communication refers, remitting the same to this capital in the shortest possible time, in order that the determination of his Excellency, the Governor General, may have a fulfilled effect. Return this with the annotation which accredit its punctual and strict fulfillment. Bulacan, March 19, 1886.—Pardo."

This resolution of the General Government of the Islands, besides having been published in the Gazette of Manila on the 18th of March, 1886, was transmitted, as is seen, to the Alcalde Mayor of the Province of Bulacan, who, in fulfillment thereof, ordered that there be annulled the entries made of the three aforesaid titles in the register of the province, and that the Decree be transcribed to the Petty Governor (Gobernadorcillo) of S. Miguel de Mayumo for notification thereof to the interested parties, and for the taking up of the title deeds issued to the latter: All of which must have been done so. The title deed of Jose Mercado could not be taken up when notification was given him on March 23, 1886, because he stated that he had delivered it to the purchaser of the land, and, later, on October 29, 1890, when Maria Roura, one of the present petitioners was requested to return the said title deed, she answered that in the lifetime of her father she heard said title deed of Sibul
138 spoken of, but that she was ignorant at that time of its whereabouts.

3. As evidence offered by the petitioners there has been brought forth a report, dated May 31, 1890, issued by the Governmental Department of the Council of Administration of these Islands (The advisory body of the Administrative Organization of these Islands) which states the following:

"Council of Administration of the Philippines. Your Excellency (the Governor General is addressed). This Department having convened in a session held this day by those whose names are stated in the margin, there was approved unanimously the following report: Your Excellency: On the 20th day of February last past, your Excellency has seen fit to transmit to this Council, in order that the latter should render its opinion without delay, the proceedings for

the installation of a sanitarium in Sibul, by granting the ownership of those medicinal waters to private industry guaranteed by the inspection of the government. * * * In this order, the convenience being palpable, and the necessity well felt, of putting the Sibul Spring in such condition that its waters might be utilized by the many persons who suffer from the frequent illnesses for which those waters are indicated by science and experience, by means of the construction of an establishment suitable for the purpose, and it being beyond doubt that the government would not be a good administrator thereof * * *, the Council not only finds no objection to the cession of the balneary to private enterprise, but considers the same of indisputable advantage provided that the spring and the adjacent lands belong to the government itself * * *; in the judgment of the Council, the decree of March 5, 1886, is not sufficient to produce the desired certainty, but rather, on the contrary, it raises the fear that there may supervene the unfortunate contingency suggested, because in addition to disclosing that there are persons who claim to be the owners or possessors of the land in which the springs in question arise, it does not seem that that decree can be taken as such a sure basis of a state of right as is supposed, inasmuch as it is at least disputable whether the administration is competent to make declarations like those which the said resolution contains, and some of the elements of the same might be deemed but slightly conformable to the sovereign provisions which prevail concerning the form and proceedings by means of which alone private property can be taken for works of public utility and therefore, ineffective and inapplicable in the face of those provisions of the rights which they conserve. * * *. Finally the conclusive determination of the matter is incumbent upon the government of His Majesty * * *."

4. The contestant offered, as part of his evidence, the copy
139 of the proceedings commenced for this purpose, as his Exhibit 1, and furthermore, by his Exhibit 2, "the conclusive determination of the Government of his Majesty," in a Royal Order of September 7, 1895, in which are to be noted findings of fact and some of the legal doctrines pertinent to this question. The findings of fact are of this tenor:

It appearing that the Civil Governor of Bulacan, in rendering the report asked of him concerning the ownership of the lands, remitted a copy of the proceedings in which it appears that the General Directorate of Civil Administration had decreed a composition of lands, issuing three titles of ownership to the sanitarium of Sibul, dated September 25, October 19 and November 9, 1885, and that these grants had been annulled by the General Government in a decree, published in the Gazette of Manila, dated March 5, 1886. It appearing that on the 19th of February, 1890, the Board of Health and Sanitarium, considering that the ownership of the State was well established, requested new instructions whether they ought to proceed with the cession of the spring to private enterprise, subsidizing the construction of the sanitarium; and when referred to the Council of Administration for its report, it likewise rendered the latter to the same effect, although the said Council considered it necessary to de-

termine with greater clearness the right of property of the State. It appearing that the General Government, in accordance with said report, again ordered the Civil Governor of Bulacan to institute a proceeding to clear the right of property of the State, *from which,* in addition to the *confirmation of the facts,* which were approved
140 in the first proceeding, there *appears proved the free use* of the springs without opposition or claim on the part of anybody: It appearing that on March 15, 1886, the General Directorate of Civil Administration arranged that plans, projects, and whatever technical work was necessary, should be made for the construction of the sanitarium * * *;

And the legal conclusions, with the conclusive sovereign resolution, are literally as follows:

"Considering finally that the fact that the State does not itself construct or subsidize the sanitarium does not require that private enterprise be deprived of constructing the same and exploiting the spring, and that in such case the most convenient procedure is the *sale* of the spring and the accessory lands by public auction, His Majesty the King (May God guard him) and in his name the Queen Regent of the Kingdom, having heard the Council of the Philippines and Possessions in the Gulf *of* Guinea and the Department of Finance and Foreign Affairs and that of State, has been pleased to determine that it is not proper to construct the sanitarium of Sibul at the expense of the Treasury of those Islands, nor from the local funds, and that, expert appraisal of the spring and the accessory lands belonging to the Government having first been made, the same be sold at public auction subject to the set of conditions which the General Directorate of Civil Administration shall formulate, the grantee to conform, in the exploitation thereof, with the requisites prescribed in the Provisional Regulations of Minero-Medicinal Springs, approved by Royal Order on February 27, 1890; it being at the same time the will of His Majesty that this resolution be published in full in the Gazette of this Capital and in that of the city of Manila. By Royal Order I state this to your Excellency for your information and the opportune effects. God guard your Excellency for many years. Madrid, September 7, 1895. Tomas Castellano. To the Governor General of the Philippines."

In the light of these established facts, lawful premises appearing in the Gazette of Manila, and of Madrid, the question is raised as to whether or not the judgment of the Court of Land Registration, which declares, or rather reiterates and confirms, the nullity, previously declared, of the composition title of October 19, 1885, in favor of José Mercado is erroneous.

141 Sight should not be lost of the fact that that which is being impugned in all the trial and in this appeal is the Decree of the Governor General of the Philippine Islands of March 5, 1886, which declared: 1—The nullity of the proceeding for composition of land instituted by Jose Mercado before the General Directorate of Civil Administration then existing, and 2—The nullity of the title deed issued in favor of Jose Mercado by the aforesaid General Directorate of Civil Administration of the Islands on October

19, 1885, and which ordered, in consequence, that the said title deed of composition be taken up as ineffective and of no value.

Neither should sight be lost of the fact that against said Decree of the Governor General of the Islands no recourse whatever was taken, either by appeal, or by administrative contention, or by civil complaint after exhausting the remedy of relief by executive action. This is the vital point.

The question to which this court should devote itself is not whether the Spanish Governor General in that Decree acted well or ill, within or without the law. Assuming the latter (which is the point to which all of the arguments of the appellants, carried to prolixity, are devoted), the Court propounds, above all others the question of whether it, or the Courts of Justice of the present sovereignty, or even those of the former sovereignty, can or could have decided, in accordance with the claims of the appellants, formulated after the lapse of eighteen years after the giving and publication of that decree in the Gazette of Manila, *that the Governor General of the Philippines lacked authority* to dictate his said decree of March 5,
142 1886, and *that said decree is the same as if it did not exist,* that all therein set forth, considered and resolved is a dead letter, of no force and effect. Concerning this principal point absolutely nothing has been alleged in support thereof, as all of the facts which constitute the basic question are supported up to the present time by both contending parties; since it is a certain and indisputable fact that the title deed was issued, annulled and ordered to be taken up, and it is a certain and indisputable fact that no opposition, no claim, and no recourse has been interposed against the declaration of nullity and the order to take up the title deed during more than eighteen years.

And the principal problem which must be determined by this Court, and even by the Spanish Tribunals, if they still existed, is whether a final Decree, directed by the Governor General in the exercise of administrative functions, could at any time, much less eighteen years after its dictation, be declared null and of no effect, of no importance, of no worth, by the civil courts.

In the United States, the Supreme Court of the nation, by means of a recourse taken in due time and form could do it; but in the Philippines, can this Supreme Court, of the Courts of Justice do likewise?

"Justice"—says a Spanish commentator—"in the United States is so organized that the Supreme Court not only determines conclusively and in a sovereign manner all questions inherently juridical, but also political questions and constitutional questions because that high tribunal is invested with the faculty to declare whether or not the laws which are passed by the legislatures there are in conformity with the federal constitution, and it is clear, that starting from this basis, there cannot exist the conflict which in other places exists between the different powers of the State, because it can in reality be said that the culminating point, the sinthesis of
143 political administrative and juridical life of the country is found represented by the Supreme Court." (Fabie—Comento de la Ley para el ejercicio de la jurisdiccion contenciosa, 15.)

Whatever may be the character of that decree or resolution of the General Government of the Philippines, whatever might be the vice which it bears or the injury which it inflicts upon private parties, it was logical that the error, the violation of law, the lack of authority, the ultra vires, the violation of personal right, which was thought to be seen, in a word, that everything to which objection might lie, should have been objected to by way of recourse and within due time before the hierarchial authorities by application to the executive authorities or, in proper case, by the contentious-administrative remedy, before the courts of that name which existed under that sovereignty.

Besides being the logical such was the legal course, as may be seen from the numerous citations of authorities adduced by both parties to this appeal, while no law or legal doctrine has been adduced by the appellant which may authorize silence or the omission of the executive or contentious-administrative recourse, in order to claim before the civil tribunals, directly and in spite of the lapse of so great a time, the right to discuss the legality or illegality of the administrative of that governing authority of the Islands; such is this juridical question, rather than that which it seems, that is to say, that of a civil right which is supposed to have been acquired and maintained in spite of that annulment and taking up of title deeds which were executively decreed.

It is fundamental, in the administrative law of Spanish
144 Colonial possessions, to distinguish whether the resolution of the General Government of the Philippine Islands of March 5, 1886, was made in the exercise of regulated faculties or by virtue of discretionary faculties according to the legal provisions in force in these Islands latterly, or formerly, according to those which then prevailed; to distinguish whether said resolution was such as forthwith produced *"estado"* (equivalent to *whether* it proceeded from the exercise of faculties regulated by law, regulations or other administrative precept), or was such as belonged to the discretionary powers of that governing authority. Although these two forms of distinction, at the different periods of time and under the legal provisions then obtaining, are substantially identical, it is necessary to define them and set them forth in their own terms in order to judge with safety.

The Court *a quo* and the appellants' concern in discussing and reasoning upon the basis of the first form of distinction. And the Court *a quo* says:

"Be it the one or the other, it is beyond all doubt that the interested parties, against whom was made the declaration of nullity of their respective titles, did not interpose the opportune recourse of appeal, either within or after the period described by Art. 28 of the Royal Decree, providing the administrative procedure in the affairs of Foreign Colonies, given on September 21, 1888, and applied to these Islands by Royal Decree of the 23rd of the same month and year, if it be considered that the administration has exercised a discretionary power, nor the contentious-administrative recourse established in Art 7 of the Law of Contentious-Administrative Procedure of September 13, 1888, applied to these Islands by Royal Decree of

November 23rd of the same year, if it be deemed that the resolution above referred to has been made by the General Government within its 'regulated' faculties. Thus there is here in question a resolution of the Administration, final not only by the lapse of the period fixed for obtaining its revocation by application for executive or contentious-administrative relief, as the case may be, but also final by consent of the interested parties whom it affected, among them the person from whom the present petitioners derive their right" (Bill of Ex. p. 7).

145 This principal basis of the decision appealed from is altogether in accordance with law, except that the law applicable is not the Royal Decree of September 21, 1888, nor the law of contentious-administrative procedure of September 13, 1888 (although the appellants invoke these same legal provisions) inasmuch as the resolution impugned is of a prior date (March 5, 1886) and to it provisions of law of 1888 can not well be applied.

The appellants say: "in accordance, therefore, with the legal doctrines which we have just cited (those of the decision of the Court *á quo*) we can establish the conclusion that the Decree of March 5, 1886, annulling the title of ownership of Jose Mercado, cannot be the subject of a contentious-administrative recourse, because it was a resolution emanating from the discretionary authority of the Governor General" * * * (Brief, pp. 15 & 16).

This being the understanding of the appellants, the grounds of the decision appealed from still stand, and, according to their own view, the appellants should have interposed, against the Decree of March 5, 1886, the recourse of appeal, not in accordance with the Royal Decree of September 21, 1888, but with that of June 9, 1878 (which the appellants likewise invoke in another argument), which was the law applicable since, according to Art. 7: "The orders of the Governor General, dictated in matters of government or in the exercise of his discretionary faculties and those having a general character or regulations, can be revoked or modified by the Supreme Government, when the latter judges them to be contrary to the laws, regulations, or provisions of general character or disadvantageous for the government or good administration of the Islands, and likewise when there are raised against them the objections of a private person who considers his rights injured, provided that the latter need not subject themselves to the corresponding declaration in the contentious course before the Council of Administration, or of a corporation, or of the Governor General himself who should consider the interests of the administration to be prejudiced."

146 The appellants not having interposed the recourse of appeal before the Supreme Government, as was proper according to the Royal Decree of 1878 on the theory that they themselves express as their conclusion concerning the character of the resolution of March 5, 1886, it follows that said resolution has become final according to the conclusions of the Court *a quo* and against it no Court of Justice must arrogate to itself the authority which then appertained to the Supreme Government of Spain, by revoking it, leaving it without force or effect, or simply ignoring it, especially when, as has been seen, it has been the basis of a new proceeding and

of new resolutions of greater transcendence and importance, as has already been seen in the premises set forth.

If it is not within the discretionary faculties of a Governor General, the resolution of March 5, 1886, must be such as to cause "estado" and in conformity with Art. 8 of the same Royal Decree, "Against the resolutions of the Governor General which produce 'estado' there lies the contentious-administrative recourse subject to prevailing provisions of law."

The prevailing provisions, here referred to, are 1—The Royal Decree of July 4, 1861, the organic law of the Councils of Administration of the Colonial Provinces, re-established by Royal Decree of March 19, 1875, which, in Art. 26 thereof, provides as follows:—"The person who considers himself aggrieved in his rights by any resolution of the Superior Civil Governor or of the Superior administrative authorities which produces 'estado' can complain against the same in the contentious course in the manner and form prescribed in the Regulations for Procedure for contentious affairs of the administrations in the Foreign Provinces."

2nd. These Regulations for Procedure of the same date, which in Art. 1 thereof provides:—"He who considers himself aggrieved in his rights by any order of the administration which produces 'estado' according to the provisions of Act. 26 of the Royal Decree of
147 this date, relative to the organization and attributes of the Councils of Administration of the Foreign provinces, shall produce a complaint against the same before the Department of Contentious Matters of the corresponding Council within the period of ninety days in the Provinces of America and of one hundred and twenty days in the Philippines, counted from the date on which the resolution which is the subject of the recourse shall have been made known administratively (1 Rodriquez San Pedro p. 296, 298)."

Therefore, either in the recourse of appeal if the case was considered one of discretionary faculties, or in the contentions, administrative recourse, if the resolution produced "estado," is the only place where there could properly be urged all of the arguments upon which the appellants now base the first error of law which they impute to the judgment appealed from.

And it is neither possible nor lawful, without risk of being foreclosed of one's rights, to fail to take recourse against a resolution which is considered injurious in the belief that one has other courses of action whereas inaction or silence, by force of legal presumption, should be interpreted as acquiescence or consent which, together with the lapse of time, impressed upon the resolution not complained of the authority of res adjudicata.

To justify the failure to interpose either appeal or contentious-administrative recourse against the oft mentioned resolution of March 5, 1886, the appellants argue, directly concerning the latter, and very obliquely and by mere inference which this Court draws, concerning the former. There is no direct argument in support of the proposition that said resolution was not susceptible to the recourse of appeal as there is to sustain, and the appellants do sustain, that

it was not so susceptible to the contentious-administrative
148 recourse. And there could not be such argument, since the appellants, in order to maintain the latter point, have proceeded upon the basis that "the Decree of March 5, 1886, annulling the title of ownership of Jose Mercado, was a resolution emanating from the discretionary faculties of the Governor General," to which is supplied the evidence derived from Article 7 of the Royal Decree of June 9, 1878, above cited, to the effect that the proper recourse was that of appeal, and that it was necessary to impugn the same by means of the recourse of appeal if it were not desired that it should become final and have the authority of res adjudicata as a thing consented to by the interested party himself.

If attempt be made to inquire why use was not made, by Jose Mercado, or by the predecessor in interest of the appellants, or by themselves, of the recourse of appeal, the sole remedy against resolutions of the discretionary powers of the Governor General, authorized by law, the most that can be found in the assignment of errors would be the following argument:

"The decree referred to"—say the appellants—"is not only outside of the true powers of the authority who dictated it, but it is also in open violation of the just rules of the legislation then in force. The Royal Decree of June 9, 1878, put in force in the Philippine Islands by another Royal Decree of November 8, of the same year (Berriz, page 374, Guia del comprador de terrenos) established in Art. 6: 'The Governor General can modify, or amend, or repeal his orders and those of his predecessors unless they have been confirmed by the Government, or are declaratory of, or in recognition of, rights, etc. etc.' The decree of award of September 7, 1885, by virtue of which the title of ownership of October 19 of the same year was issued in favor of Jose Mercado, was a resolution or gubernatorial order, declaratory of and in recognition of the right which the said Jose Mercado invoked for the effects of a law. So that the resolution which was sought to be annulled by the decree of March 5, 1886, being of this nature, the latter could not have its effect carried out because the authority dictating it, lacked power to modify or amend orders which are declaratory of or in recognition
149 of, rights." (Brief, p. 9.)

But even in order to say this to that authority, some recourse should have been interposed unless it be shown that it was sufficient to remain silent, to do naught and to let the resolution run on since in the end it must have no effect.

It is an error to suppose that there is here in question a resolution of the Governor General which amends or revokes another prior resolution of the same Governor General. The decree of September 7, 1885, by virtue of which the composition title of October 19, of said year, was issued, was made by the General Directorate of Civil Administration as the seal it bears demonstrates: "General Directorate of Civil Administration—Philippines," and all of its context" * * * and as by decree of this General Directorate dated September 7, 1885, there has been awarded gratuitously to the interested party the ownership of said lands, etc. * * *," And the issuance

thereof appertained to the General Directorate of Civil Administration in accordance with Royal Decree of June 25, 1880, Art. 11, which provides: "There appertains to the Gen. Directorate of Civil Administration the hearing and determination of the proceedings for composition of the royal lands and of the incidental proceedings to which they give rise." What the Governor General did by his resolution of March 5, 1886, was to repeal and leave without effect the said decree of the Directorate of Civil Administration of September 7, 1885, and the title deed which by virtue thereof had been issued on October 19th following, by virtue of a provision of law which is the Decree of the Governor General of the Philip-
150 pines of September 9, 1874, wherein article 12 provides the following:

"The resolution of the Director General of Civil Administration, in all matters which are in his charge, shall produce 'estado' provided that they have not been amended by my authority and they shall be approvable before the Minister of Foreign affairs through this General Government, or by taking the contentious character before the chamber of the Supreme Court (Audencia) designated for hearing these matters."

It is therefore evident: 1st, That it was the General Directorate of Civil Administration which entertained the proceeding for the composition of royal lands instituted by Jose Mercado, because such action appertained to that body, and it was said directorate which made therein the decree of September 7, 1885, by virtue of which title of ownership was issued to Mercado: 2nd, That because it appertained to that body it was the Directorate of Civil Administration which entertained the proceeding instituted by Pengson to which the issuance of said title gave rise, by reason of material errors committed by the expert Jose Moreno in said proceeding and in two others in which "the General Inspection of Unreclaimed lands and this General Directorate have been taken unawares by the said expert, into issuing, as they did issue, by virtue of the surveys which he made, letters of ownership by composition of the lands bordering upon the Sibul Springs, from whose purport it might be believed that the spring is to be found included within some one of them:" 3rd, that the determination of this proceeding was that ordered by the Governor General by virtue of his authority as is stated in the mandatory part thereof: "His Excellency, the Governor General, in an order of the 5th instant, has been pleased to *decree*: 1st, It is declared that the spring of minero-medicinal waters of Sibul has always been of the public domain and consequently the property of the State; 2nd, The three titles of ownership by composition of lands issued by the Gen. Directorate of Civ. Admin. on September 25, October 19, and November 9, 1885, become null and without
151 effect."

The consequence of not having impugned this resolution, either on appeal or by contentious-administrative recourse, has been that the same has become final and has had fulfilled effect in so far as concerns the declaration that the spring of minero-medicinal

waters of Sibul was of the public domain and the property of the State, as will be more clearly shown in this decision itself.

To justify the failure to interpose the contentious-administrative recourse the appellants allege that the Decree of March 5, 1886, could not be the subject of such recourse because the right annulled was civil in character and emanated from acts which the administration had performed as a juridical person, subject to rights and obligations, and they invoke Article 4 of the Royal Decree of November 23, 1888, also cited in the judgment appealed from, in which it is evidently prescribed said allegation; but it has already been said that this provision of law cannot be invoked in order to apply the same to a resolution dictated when it was not yet, and could not be, in force, as appears very clearly from the respective dates. Furthermore they invoke the Royal Order of September 20, 1852, Article 1 whereof provides that to the jurisdiction of the competent courts and Tribunals of Justice correspond the actions which treat of the ownership of national properties, or whatever other rights which may be based on titles prior or subsequent to the sale, that is to say, independent; and they cite, with earnestness, from the preamble of the said Royal Order, these words of the law giver: "But the actions, over ownership or whatever others which are based on prior or subse-
152 quent titles independent of the sale or lease, shall always be within the jurisdiction of the ordinary courts" (Berriz, Guia del Comprador de Terrenos, 229).

The lower court, and counsel for the Government in this court, deny to the act of composition had in favor of Jose Mercado on October 19, 1885, the character of a contract, and of a contract of sale, for various reasons, but principally because no consideration has passed, since the title was issued gratuitously as is set forth explicitly therein. It is not a case in which may be determined now by this Court the nature of title by composition of royal lands in the Philippines: it suffices to assume, following the argument, that it was actually a contract of purchase and sale between the State and a private person, and to assume, for the moment, that the provisions of the laws of alienation and of sale of national properties in Spain were identical with the provisions of the laws of sale and composition of royal lands in the Philippines: on all of these hypotheses, Jose Mercado could not dispense with the impugnation of the Decree of the General Government of the Philippines of March 5, 1886, by considering a priori that he enjoyed an action of ownership and that actions of ownership were not within the scope and jurisdiction of the administration, but within those of the Courts of Justice.

An action of ownership could not arise from a contract which, although it should have produced the effect of transmitting the ownership of the State to the supposed purchaser, Jose Mercado, was later annulled and failed to produce such effect because Jose Mercado consented to the resolution nullifying the contract and the
153 title. It is making an assumption of the question to assume oneself owner when the character of owner is expressly denied, to assume the existence of title of ownership when this title has been annulled, to assume that an action of ownership has sprung from this

title when no action could have arisen because it became of no effect, which is what it is sought to demonstrate. Furthermore, that which is reserved to the Courts of Justice by said Royal Order, as is seen from the very argument of the appellants, are the actions of ownership or whatever others which may be based upon titles prior or subsequent to, and independent of the sale, and Jose Mercado could not invoke in 1886 a title prior to the composition nor a subsequent title independent of the composition, but only the very title of composition itself, the principal turning point of the question then as now. And within these same hypotheses, this same consideration should have been offered as an argument in the recourse against the resolution of the administration to deny the latter's jurisdiction or to prohibit that body from entertaining a recourse or an action which was considered beyond the limits of its jurisdiction.

Although the remedy which the aggrieved party might have exercised against the administration of the State under that legislation be truly civil in character and within the jurisdiction of the Courts of Justice, this Court has already said more than once that the claimant could not avail himself of judicial process without having first exhausted the executive remedy before the administration itself. The courts will not permit any judicial complaint against the
154 exchequer unless the claimant present together with the documents which the law requires as proof of his rights, a certificate stating that claim has been made in executive course (Royal Decree September 20, 1851, Art. 1). In Royal Order of April 11, 1860, was ordered the application of Art. 10 of the law of accounts of February 20, 1850, and Art. 173 of the Instructions of May 31, 1835, "which prohibit the admission of disputed demands unless the claimants have previously exhausted the executive remedy" (Valenton vs. Murciano, 3 Phil. Rep. 537).

The resolution of March 5, 1886, was not one within the discretionary powers of the Governor General of the Philippines and was not susceptible of appeal in accordance with Art. 7 of the Royal Decree of June 7, 1878.

If Jose Mercado considered himself aggrieved in his rights annulled by said resolution, the latter should have been made the subject of a corresponding declaration in the contentious course before the Council of Administration according to the same Article.

The resolution of March 5, 1886, for the same reason, that it was not susceptible of the recourse by executive action, produced "estado" and against it lay the contentious-administrative recourse in accordance with Art. 8 of the same Royal Decree.

In addition to this general consideration that the resolution was one which produced "estado" there is besides the special consideration that it was a contentious-administrative matter, included in the 7th item of Art. 27 of Royal Order, Organizing the Councils of Administration of the Foreign Provinces, re-established by
155 another Order of March 19, 1875, already cited, which provides that:

"The Department of Contentious Matters, constituted into a tribunal, shall hear the affairs of the Administration of the Provinces

which partake of that character (as a general rule, resolutions which produce "estado" Art. 26) and by assignment the following: * * * 7th For the fulfillment, notification, recission, effects, or incidents of the leases, sales, and grants of the properties of the State, when, in the last two cases, the original act of acquisition is treated of and excepting the litigation of ownership."

By either one of the two considerations set forth, the contentious-administrative recourse should have been interposed within the period of one hundred and twenty days counted from that on which the resolution which was the subject matter of the recourse was communicated administratively, according to Art. 1 of the Regulations of Contentious-administrative Procedure of July 4, 1861, likewise cited above.

There having been interposed neither this recourse, nor any other, nor even a civil demand on the hypothesis that the matter was of purely civil import, the resolution of March 5, 1886, is final, has obtained the authority of res adjudicata, and has produced an effect of supreme transcendency which has already been set forth in the legal premises herein, from which are derived doctrines of law—among others the doctrine that the Courts of Justice cannot go back in this matter so as to correct error, ultra vires acts, or excesses of authority which the governing authority dictating the same may have committed.

An effect of transcendency is the proceeding instituted concerning the ownership of the minero-medicinal springs of Sibul and the final determination made therein, which is set forth in paragraph 4 referring to Exhibit 2 of the representative of the govern-
156 ment. It is Royal Order of September 7, 1895, in which firstly is set forth as a result of the proceeding the "confirmation of the facts which are approved in the first proceeding," that is to say, in the proceeding moved by Pengson, the final determination of which was the Decree of March 5, 1886, and finally, as conclusive determination, the alienation by public auction "of the spring and accessory lands belonging to the state" was ordered, which resolution was ordered published in the Gazettes of Madrid and of Manila, and which was also not impugned in contentious-administrative recourse before the Council of State of Spain within the period fixed by law.

By virtue of this resolution it is sure that this spring and accessory lands were among the public properties ceded to the new sovereignty by the Treaty of Peace of Paris on December 10, 1898,—a public nature which conflicts with the claim of the petitioners based upon a title annulled by the Decree of March 5, 1886, whose annullment is to be found, virtually and *ex consequenti*, confirmed by Royal Order of September 7, 1895.

Therefore, the Court of Land Registration has not erred in considering null a title of composition declared null in final and conclusive manner by an administrative resolution which has passed to the authority of res adjudicata.

II.

Nullity of the Public Deed of Sale Executed by Jose Mercado in Favor of Juan Roura.

Until October 19, 1885, there had not been issued to Jose Mercado the composition title by virtue of which he should have been "held and considered as the lawful owner of the aforesaid parcels
157 of land" and "legalized his possession," according to the purport of said composition title, and yet on March 4th of that year, it appears that he had already sold the same to Juan Roura, stating in the public deed executed for the purpose that "he then held the same in ownership and possession."

The lower court having considered that "the deed of sale of the land which Jose Mercado executed in favor of Juan Roura being null, the petitioners have not acquired from the latter by hereditary succession, any right of ownership in the land which is the subject of this proceeding," the appellants have assigned this as error in the record of the assignments above set forth.

More exact and precise is the consideration contained in the decision wherein the court says: "The nullity of the title of the vendor having been declared by Decree of the General Government, and consented to first by the purchaser, and later by his successors in interest, the validity of the contract of sale effected by said deed falls of its own weight." (Bill of Ex. p. 13).

The public notarial document, in so far as external form is concerned, is executed in accordance with the laws prescribing formalities which then prevailed, and, in this sense, its nullity for lack of the dire formalities cannot be argued; but, as concerns its internal form or substantial contents, which is that to which the lower court meant to refer in the above quoted statement, it is altogether true and according to law that the contract of sale which was sought to be set forth in said deed is null, because Jose Mercado,
158 who made the conveyance of ownership by means of the contract of sale to Juan Roura, lacked title and right of ownership over the thing sold.

No one can give to another a greater right than he has. When the right of him who gives has been determined, the right of him who receives becomes determined. If the title of Jose Mercado, who sold the land, was declared null, and his ownership determined, the title of Juan Roura who purchased the land, must be null and his ownership must become determined.

In this sense, the Court of Land Registration has not committed error of law in considering as null the contract of sale made between Jose Mercado as vendor and Juan Roura as cendee, and as null, consequently, the title of ownership which the successors in interest of Roura invoke in their favor.

III.

Possession of the Petitioners.

The latter argue that the judgment appealed from is error in that, as they claim, the trial court denied their possession as well as that of their predecessors in interest.

But finally they argue concerning this point in the following terms:

"This Honorable Court"—they say—"in cause No. 1413 Andres Valenton et al. vs. Manuel Murciano, above cited, has established the doctrine that the mere occupation of public alienable lands in the Philippine Islands, whatever may be the duration of time that it continued, was not of itself sufficient to prescribe in favor of the occupant the ownership of the Government of Spain to said lands. If, then, mere occupation, that is to say, physical possession, could not constitute sufficient title to acquire by prescription public alienable lands, such as are the royal lands, it is idle and useless to involve this fact from the viewpoint of Act No. 496." (Brief of appellants p. 32).

159 Since purely physical possession lacks the effect claimed in the petition, and since such is the nature of possession which is not founded on sufficient title, or is based on a wholly vicious title, the considerations of the judgment appealed from are well placed.

For all of these reasons we affirm in all of its parts the judgment appealed from, without the costs of this appeal.

It is so ordered.

(Signed) C. S. ARELLANO.

We concur:

FLORENTINO TORRES.
E. FINLEY JOHNSON.
CHARLES A. WILLARD.
JAMES F. TRACEY.

160 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 2646.

MARIA ROURA & JUANA ROURA, Appellants,
vs.
THE INSULAR GOVERNMENT, Appellee.

And now come the appellants in the above entitled action, through the undersigned counsel, and file their exception to the resolution

rendered by this Court in this case on the 25 instant, denying the motion for the new trial prayed for by said appellants.

Manila, July 29, 1907.

HAUSSERMANN, COHN AND WILLIAMS,
CHARLES C. COHN,
Attorneys for Appellants.

161 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 2646.

MARIA ROURA & JUANA ROURA, Appellants,
vs.
THE INSULAR GOVERNMENT, Appellee.

And now come the appellants in the above entitled action, through the undersigned counsel, and file their exception to the decision rendered by this Court upon the merits of the record in this case, on July 25, 1907, whereby the judgment appealed from is affirmed.

HAUSSERMANN, COHN AND WILLIAMS,
CHARLES C. COHN,
Attorneys for Appellants.

162 Title of Court and Cause.

And now come Maria Roura and Juana Roura, plaintiffs herein, and say:

That on or about the 25th day of July, 1907, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the defendant and against these plaintiffs in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of these plaintiffs, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these plaintiffs pray that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., August 22, 1907.

(Sgd.) HAUSSERMANN, COHN AND WILLIAMS,
P. P. CHARLES C. COHN,
Attorneys for Plaintiffs.

163 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

MARIA ROURA and JUANA ROURA, Plaintiffs in Error,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

Assignment of Error.

The plaintiffs in error respectfully submit that in the record, proceedings, decision and final judgment of the Supreme Court of the Philippine Islands, in the above entitled matter, there is manifest error in this, to-wit:

First. The court erred in declaring null and void the title to the property in question granted to Jose Mercado by the sovereign government of the Philippine Islands on October 19, 1885.

Second. The court erred in holding that the deed of transfer of the property in question from Jose Mercado to Juan Roma on the 4th day of March, 1885, was null and void.

Third. The court erred in holding that the refusal to register the title of plaintiffs in and to the property in question under and by virtue of the provisions of Act 496 of the U. S. Philippine Commission was not in conflict with and in violation of the provisions of the Act of Congress of July 1, 1902, for that by such refusal it is assumed and sought (1) to deprive plaintiffs in error of certain rights, privileges and benefits secured to other citizens of the Philip-
164 pine Islands; (2) to deprive the plaintiffs in error of said property without due process of law; (3) to deprive and to deny to plaintiffs in error the equal protection of the law.

Fourth. The court erred in holding that by such refusal to register and certify the title of plaintiffs in error to said property, said plaintiffs are not deprived of liberty and property without due process of law.

Fifth. The court erred in holding that the courts of the Philippine Islands have not the power or authority to declare unconstitutional, and therefore null and void, the acts and deeds of the executive officers of the Philippine Islands which are in conflict with and in violation of the supreme law of said islands.

Sixth. The court erred in holding that the plaintiffs in error are not entitled to the rights, privileges and immunities conferred upon the citizens of the Philippine Islands under and by virtue of Paragraph 6 Section 54 of Act 926, of the U. S. Philippine Commission.

Seventh. The court erred in affirming the judgment and decree of the Court of Land Registration of the Philippine Islands in this cause.

Eighth. The court erred in refusing and failing to reverse the judgment and decree of the Court of Land Registration in this case and to order a decree to be entered in said cause in favor of the

plaintiffs in error registering and certifying the title of the latter to the property in question.

165 Ninth. The Court erred in giving force and effect, and in refusing to hold as null and void, the Decree of the Governor General of the Philippines of March 5, 1885.

HAUSSERMANN, COHN AND WILLIAMS,
CHARLES C. COHN,
Attorneys for Plaintiffs in Error.

166 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

MARIA ROURA and JUANA ROURA, Plaintiffs in Error,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

This 24th day of August, 1907, come the plaintiffs by their attorneys and file herein and present to this Court their petition praying for a writ of error, and an assignment of errors intended to be urged by them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof — does allow the writ of error upon the plaintiff- giving bond according to law in the sum of Five Hundred Dollars, United States Currency.

Given and made at Manila, P. I., this 24th day of August, 1907.

E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

167 MARIA ROURA and JUANA ROURA, Plaintiffs in Error,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, between Maria Roura and Juana Roura, plaintiffs, and the Government of the Philippine Islands, defendant, a manifest error has happened, to the great damage of the said Maria Roura and Juana Roura as by their complaint appears,

We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the First day of April, 1908, next, in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid being in-
168 spected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the Sixth day of December, in the year of our Lord one thousand nine hundred and seven, and of the independence of the United States of America the one hundred and thirty-second.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court
of the Philippine Islands.

169 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

MARIA ROURA and JUANA ROURA, Plaintiffs in Error,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

THE UNITED STATES OF AMERICA, *ss:*

To the Government of the Philippine Islands, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, on the 1st day of April, 1908, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Philippine Islands, wherein Maria Roura and Juana Roura are plaintiffs, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Given under my hand at the City of Manila, Philippine Islands, this 6th day of December, in the year of our Lord one thousand nine hundred and seven.

[Seal Corte Suprema, Islas Filipinas.]

E. FINLEY JOHNSON,
Justice of the Supreme Court
of the Philippine Islands.

Copy Received this 6th day of December, 1907.

GREGORIO ARANETA,
Attorney General Philippine Islands,
By A. B. B.

170 Title of Court and Cause.

Know all men by these presents: That we, Maria Roura and Juana Roura, as principals, and Ceferino de Leon and Nazario Constantino, as sureties, are held and firmly bound unto the Government of the Philippine Islands in the full and just sum of Five Hundred dollars ($500.00) to be paid to the said Government of the Philippine Islands, its attorneys, successors, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 5th day of October, in the year of our Lord one thousand nine hundred and seven.

Whereas lately at the Supreme Court of the Philippine Islands, United States of America, in a suit depending in said Court, between Maria Roura and Juana Roura, plaintiffs, and the Government of the Philippine Islands, defendant, a judgment was rendered against the said Maria Roura and Juana Roura, and the said Maria Roura and Juana Roura having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Government of the Philippine Islands, citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 10th day of December next.

Now the condition of the above obligation is such that if the said Maria Roura and Juana Roura shall prosecute said writ of error to effect and answer all damages and costs if they fail to make
171 their plea good, then the above obligation to be void: else to remain in full force and virtue.

(Sgd.) MARIA ROURA. [SEAL.]
" JUANA ROURA. [SEAL.]
" CEFERINO DE LEON. [SEAL.]
" NAZARIO CONSTANTINO. [SEAL.]

Sealed and delivered in the presence of:

(Sgd.) JOSÉ GENEROSO.
" M. P. LEUTERIO.

Approved by

E. FINLEY JOHNSON,
Justice of the Supreme Court.

172 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing pages constitute a true and correct transcript of the record and proceedings in the case of Maria Roura and Juana Roura, plaintiffs in error vs. The Insular Government, defendant in error.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this twenty-ninth day of November, one thousand nine hundred and seven.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court
of the Philippine Islands.

173 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Maria Roura and Juana Roura were appellants, and The Insular Government was appellee, a final judgment was rendered by said Supreme Court on the twenty-ninth day of July, A. D. 1907, in favor of the said Insular Government, and against the said Maria Roura and Juana Roura, and that on the twenty-fourth day of August, A. D. 1907, said Maria Roura and Juana Roura sued out a writ of error to said Supreme Court, directed to remove said cause to the Supreme Court of the United States.

In testimony whereof, I have hereunto subscribed — name and affixed the seal of said Supreme Court, at Manila, Philippine Islands, this sixth day of December, A. D. 1907.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court
of the Philippine Islands.

Endorsed on cover: File No. 21,272. Philippine Islands Supreme Court. Term No. 208. Maria Roura and Juana Roura, plaintiffs in error, vs. The Government of the Philippine Islands. Filed July 24, 1908. File No. 21,272.

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 35.

MARIA ROURA and JUANA ROURA,
Plaintiffs-in-Error,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

Writ of Error to the Supreme Court of the Philippine Islands.

BRIEF FOR PLAINTIFFS IN ERROR.

Introductory Statement.

This is a writ of error to review a judgment of the Supreme Court of the Philippine Islands, affirming a judgment of the Court of Land Registration which dismissed an application made by the plaintiffs below (here the plaintiffs-in-error) to register their title to a parcel of land of 2776.87 square meters, in the Barrio of Sibul in the Municipality of San Miguel de Mayumo in the Province of Bulacan.

Such application was presented to the Court of Land Registration under the Land Registration Act (No. 496, Acts of Phil. Com.) on September 20, 1904 (Rec., p. 1). Opposition was made by one of the adjoining owners, Modesta Pengson, who stated that she claimed by virtue of a title deed from the Spanish Government (Rec., p. 13), but such opposition was thereafter withdrawn (Rec., p. 17).

The Insular Government also made opposition and set

up a claim that the land was of the public domain (Rec. pp. 12, 13). The case was tried entirely on documentary evidence and was decided by the Court of Land Registration adversely to the plaintiffs on February 21, 1905 (Rec. pp. 61-67). An appeal was then taken to the Supreme Court of the Philippine Islands, which heard the cause upon a bill of exceptions, and on March 22, 1907, affirmed the judgment below (Rec., p. 67). An "amplified decision" to the same effect was thereafter entered on July 25, 1907 (Rec., pp. 68-87), and this writ of error was then sued out (Rec., p. 90).

Statement of Facts.

The facts are simple and undisputed, and for the most part matters of record.

For more than thirty years prior to 1885, José Mercado, who was apparently a farmer, had been in peaceful possession, "without interruption of any kind," of the land in question, and had cultivated the same (Rec., p.6). In that year he applied to the Director General of Civil Administration for the "composition" of the land under Article 5 of the Regulations of June 25, 1880 (Rec.,p. 17) and on October 19, 1885, a title deed was issued to him in due form (Rec., p. 22).

Before actually receiving the deed, however, and on March 24, 1885, Mercado sold the land to plaintiff's testator, Juan Roura (Rec., pp. 4, 68).

Shortly thereafter Roura died, leaving a will by which he left one-fifth of his residuary estate to his three natural children, and the remaining four-fifth to his two legitimate daughters, Maria and Juana, the plaintiffs herein. (Rec., p. 8). A voluntary partition was thereafter made by which the land in question in Sibul was alloted as part of the share of plaintiffs (Rec., pp. 26-27). Thus, as stated by the Court of Land Registration, "the plaintiffs allege and prove, by means of the will and testament of their father, Juan Roura, their hereditary title, by *virtue of which they have continued in possession of the land acquired by their father*" (Rec.,

p. 68). A continuance of possession of about fifty years is thus established; over thirty years prior to 1885, and nearly twenty years from that date to the presentation of the application.

These facts are uncontroverted and, standing by themselves, indisputably establish a valid and registrable title in the plaintiffs. The additional facts, upon which their rights were denied, are as follows: In 1885, at about the time when Mercado's deed was issued, two other deeds of property at Sibul were also issued, one to Regino Pengson, the other to the Parochial Curate of San Miguel de Mayumo. There appears to have been some question about the boundaries, and in 1886, Regino Pengson instituted a proceeding in regard thereto before the General Directorate of Civil Administration (Rec., p. 33). It does not appear that Mercado or Roura was heard in such proceeding or had any notice of it until after it was determined. It resulted in a decree made by the Governor General on March 5th, 1886, purporting to annul the three title deeds issued in 1885, and directing their return, with leave to the three grantees to institute new proceedings for composition of their lands, except so far as such lands might be included within the limits of a sanitarium to be thereafter laid out by the public authorities. These were excluded from composition, without prejudice to indemnity in favor of any owner whose land should be so taken (Rec., pp. 34-36). Mercado was notified of this decree on March 23, 1886, and stated that he had sold the land and delivered his own title deed to the purchaser (Rec., pp. 37, 38). An order was then made on March 29, 1886, that he disclose the name of the purchaser, but such order was never served upon him (Rec., pp. 38, 39). Four years later, in October, 1890, Mercado's death was reported, and his wife was ordered to appear and disclose the name of the purchaser. She did so and Maria Roura was then ordered to appear and deliver up the deed (Rec., p. 57). She appeared on October 29, 1890, and stated that she was ignorant of its whereabouts (Rec., p. 58). Nothing further was done.

and the Rouras were left in undisturbed physical possession, which continued until the present application (Rec., p. 68).

In the same year (1890) the Council of Administration reported to the Governor General that while the establishment of the proposed sanitarium was desirable, the ownership by the State of the Sibul Spring was doubtful, and the decree of March 5, 1886, was of questionable validity, and apparently an invasion of private rights (Rec., pp. 32,). The matter then remained in *statu quo* until 1895, when the project of governmental construction of a sanitarium was abandoned and it was decreed by Royal Order that "the spring and the appurtenant lands belonging to the State be sold by means of public auction" (Rec., p. 60). There is no claim or suggestion that any sale of the land now in question was ever made under this decree, or any interference with plaintiffs' possession attempted.

Upon these facts, the Courts below both held that by reason of the order of annulment of March 5, 1886, no effect is to be given to the possession of plaintiffs and their predecessors, or to the composition deed to Mercado, or Mercado's deed to Roura.

Specification of Errors.

On behalf of the plaintiffs-in-error, it is submitted that the Court below erred:

1. In holding the composition deed of October 19, 1885, void and of no effect.

2. In holding the conveyance of Mercado to Roura of March 4, 1885, void and of no effect.

3. In holding the decree of March 5, 1886, effectual to divest the ownership of plaintiffs' predecessors in title.

4. In holding that plaintiffs were not entitled to registration of their title as owners, and thereby depriving

them of rights to which they were entitled under the Act of Congress of July 1, 1902, and Acts Nos. 496 and 926 of the Philippine Commission.

5. In holding that the Courts of the Philippine Islands have not the power to declare null and void acts of the executive officers of said Islands which are in conflict with the supreme law of said Islands.

(See Assignments of Error, Rec., pp. 89, 90.)

Brief of the Argument.

The position of the plaintiffs may be very briefly summarized as follows:

In 1885 José Mercado was already, by virtue of his thirty years' possession, the absolute owner of the land in question. The composition deed of October 19, 1885, did not create his title, but was merely evidence of it. The decree of March 5, 1886, was wholly ineffectual to divest his *ownership*, and at most only affected the record evidence of such ownership. It is immaterial that no affirmative proceedings were taken by Mercado or his successors in interest to question the validity and effect of the decree of annulment. They were justified in relying on their undisturbed possession and awaiting adverse action, when it would be open to them to raise all such questions. This ownership, founded on possession, was in itself a property right, protected by the Treaty of Paris and the Organic Act, and entitled to registration as a title in fee simple. The Insular Government is now asking this Court to carry into effect even beyond its very terms a decree of a Spanish Governor General, made thirteen years before the cession, which is void on its face as in violation of the fundamental laws of the former government, and, by virtue of such void decree, to deny plaintiffs' ownership of lands which have been in their possession for fifty years,—a possession which the Spanish Government never undertook to disturb. This is wholly inconsistent with the purpose of the

United States in administering their rights in the Philippines "for the benefit of the inhabitants thereof," as declared in the Organic Act, and as expounded by this Court in Cariño *v.* Insular Government, 212 U. S., 449, and reiterated in Reavis *v.* Fianza, 215 U. S., 16.

The decision below followed the doctrine of Valenton *v.* Murciano, 3 Phil. Rep., 537, which has since been expressly overruled on this point by this Court in the Cariño case.

POINTS.

I.

This court has jurisdiction of this cause.

The jurisdiction of this Court under Sec. 10 of the Organic Act (32 Stat. 695) has a double basis.

FIRST.—"The title.....of real estate exceeding in value of the sum of twenty-five thousand dollars.....is involved." This value is amply proved by the affidavits of three competent witnesses, Raphael del Pan, H. Thurber, and Arthur C. Grilk, filed in the office of the Clerk of this Court on July 24, 1908, which show that, in September, 1904, when the proceeding was begun, the property in question was worth at least $30,000 U. S. Gold and that it has since increased in value.

SECOND.—The effect of the Treaty of Paris, of the Fifth Amendment to the United States Constitution, and of the Organic Act of the Philippine Islands, all of which guarantee the security of plaintiffs' rights of property, is also involved.

That a writ of error is the proper method for the review by this Court of proceedings for the registration of titles, begun in the Philippine Court of Land Registration, was determined by this Court in Cariño *v.* Insular Government, 212 U. S., 449 and Tiglao *v.* Insular Government, 215 U. S., 410, and requires no further discussion.

II.

The plaintiffs have good title to the land in question by possession irrespective of the composition deed or its pretended annulment, and are entitled to have such title registered.

The whole subject of the acquisition of title to lands in the Philippines by prescription, independent of formal grant from the State, was so elaborately argued and fully considered in the Cariño case (*supra*) that it would seem idle repetition to traverse the ground again. Suffice it to say, that this Court there held valid and registrable a title founded upon mere length of possession without any grant from the government, saying, by Mr. Justice Holmes, that "as prescription, even against crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty," and overruling the determination to the contrary in Valenton *v.* Murciano, 3 Phil. Rep., 537, which was relied upon by the Court below in the case at bar (Rec., p. 87). In the Cariño case this Court reviewed the Spanish law on the subject from the Partidas down to the Royal Decree of June 25th, 1880, under which Mercado's application for composition in the case at bar was made. For the present case, it would seem sufficient to refer merely to the Civil Code, which in Art. 1959 provided that "*ownership* and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years *without the necessity of title nor good faith,*" thus re-enacting the provisions of the Third Partida, Title XXIX, Law 21, in regard to "extraordinary prescription." Precisely the same rule was embodied in Art. 5 of the Royal Decree of June 25th, 1880, which provides that "those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period

of thirty years if uncultivated, shall be regarded as proprietors thereof" (Alcubilla, 5th ed., Vol. 1, p. 1011). Mercado applied for and obtained his deed under this article (Rec., p. 17), and he was therefore at the time of such application the "owner of the land by the very terms of the decree" (Cariño case, at p. 461). As this Court has already construed such decree, "the words 'may prove' (acrediten), as well, or better, in view of the other provisions, might be taken to mean when called upon to do so in any litigation. * * * The effect of the proof whenever made was not to confer title, but simply to establish it, as already confirmed by the decree if not by the earlier law." (do., pp. 462, 463.) This ownership, and the possession upon which it was based, continued down to the present application for registration, and simply upon such possession, which was both proved and *found*, plaintiffs were entitled to registration, whether or not any grant from the Spanish Government was ever made. Such grant being unnecessary, its pretended annulment is immaterial. Upon this ground alone the plaintiffs are entitled to a reversal.

There is nothing adverse to this conclusion in the case of Tiglao *v.* Insular Government, 215 U. S. 410. There the possession of claimant's predecessor in interest began under an attempted grant by local officials without any power to make it, which was void on its face. Such possession continued for only twelve years. The original grant was insufficient to give even any color of title, or to support an inference of good faith on the part of the grantee. For nearly twenty years before the proceeding was instituted, there had been no possession at all.

In the case at bar there had been sufficient length of possession prior to the "composition" to dispense with the necessity of either color of title or good faith, and such possession continued down to the commencement of the proceeding. Moreover, there is neither evidence nor finding that prior to Mercado's possession the lands were ever claimed to be public lands, and his application for composition did not constitute an admission to this effect.

It was merely an effort on his part to comply with the law and get record evidence of his ownership.

III.

The decree of annulment was ineffectual to divest the title already acquired by possession.

In the first place, such decree did not purport to operate on Mercado's ownership or possession. It merely annulled his *title deed,* without prejudice to a new application therefor or to compensation for any land, belonging to private parties, which might be taken for the proposed sanitarium (Rec., p. 34). It directed a return of the title deed, but by this time the deed had been turned over to Roura, and no demand therefor was ever served upon him during his life time, or upon either of his devisees until four years later (1890), when such a demand was made upon one of them alone (Maria). It does not appear that any demand was ever made upon Juana or that any further proceedings were ever taken to compel the return of the deed, which was eventually produced by the plaintiffs in this proceeding. Their possession was left wholly undisturbed, as appears by the statement in the decision of the Philippine Supreme Court that "they have continued in possession of the land acquired by their father" (Rec., p. 68). The suggestion in the decision of the Court of Land Registration (Rec., p.66), that "it has not been proved that there had been exercised, either before or after the declaration of nullity of the title, any possessory act on the part of the petitioners or of their predecessor," is simply contrary to the record and to the whole tenor of the decision itself. Thirty years *actual possession and cultivation* by Mercado was proved by the declaration of the "commune of leading citizens," to the number of thirty, of May 3rd, 1885 (Rec., p. 6). Such possession is presumed to have been in good faith, and to have so continued, under Arts. 434 and 436 of the Civil Code, which are as follows:

Art. 434. Good faith is always presumed, and any person alleging bad faith on the part of the possessor is obliged to prove it.

Art. 436. It is presumed that the possession is still enjoyed in the manner in which it was acquired until the contrary is proved.

No notice of any objection to the deed appears to have reached either of the plaintiffs until four years later, and then their *possession* was not challenged.

The decree of March 5, 1886, it is true, contains a declaration that "the Spring of mineral medicinal waters of Sibul has always been of the public domain and consequently the property of the State" (Rec., p. 34). But this is merely what Mr. Justice Holmes characterized in the Cariño case as "theory and discourse," and this alleged title of the State was never asserted except on paper. The re-assertion of this claim by the present Philippine Government seems a somewhat extraordinary perversion of the benevolent intentions of the United States toward the inhabitants of the Islands.

The whole discussion of the subject by the Courts below appears to be based on a fundamental misconception of the nature of the "composition deed." It is treated as if it were, in effect, an eleemosynary donation from the Government to Mercado, a free gift of the State's bounty, because only the fees of the surveyor were paid by the grantee and no consideration was paid for the land itself. From this it is argued that what the State gave, the State could take away in the exercise of an arbitrary executive discretion. But the major premiss of this argument is wholly erroneous. The composition deed was not a gift, it was a recognition of a title already acquired. No consideration was paid for the land, because it was already the property of the grantee. It was only those whose possession had not ripened into ownership who were required to pay something for the land in order to obtain the deed (See Art. 6, Subds. (5) and (6), of the Decree of June 25, 1880, also Report of the Coun-

cil of State quoted in Berriz, "Guia de Comprador de Terreños, etc." at pp. 17-23). Thus the very fact that the deed was "gratuitous" proves that the grantee must have been an owner and not a purchaser. The view of the Courts below to the contrary was a corollary of the erroneous theory, prevailing before the decision in the Cariño case, that prescription did not run against the Spanish Crown in the Philippines.

This error of the Courts below may also have been partly based on a failure to differentiate between the real meaning of *"titulo"* in Spanish, and "title" in English. As pointed out in the brief for plaintiff in error in the Cariño case at pages 50-52, the word *"titulo"* often has the restricted sense of the "instrument which evidences the acquisition of ownership" (Alcubilla, Vol. 8, p. 836, 1st column, Note 3). This was obviously the meaning in which it was used in the Governor General's decree of March 5th, 1886 (Rec., p. 34). The "title of ownership * * * *issued* on October 19, 1885," can only mean the *"titulo,"* the composition deed. It cannot connote the *"dominio,"* the ownership of the property, which was not an instrument issued from a public officer on a particular date, but was an existing legal status, resulting from past physical facts, beyond the power of all the decrees of all the Governors-General to blot out or change. This limited meaning of *"titulo"* was recognized and explained by this Court in the Tiglao case, 215 U. S., at p. 416.

IV.

The decree of annulment as construed and applied by the Courts below was void under the constitution and laws of Spain.

The Courts below treated the decree of annulment as operative not only upon the composition deed, but also

upon the actual ownership of the property. This would be a violation of the Spanish Constitution of 1876, of which Art. X reads as follows:

> "There shall never be imposed the penalty of con-
> "fiscation of goods, *nor shall any one be deprived of*
> *"his property unless it be by competent authority*
> *"and for public utility, there being always a corres-*
> *"ponding indemnity paid in advance.* If this requi-
> "site shall not be complied with, the *judges* will pro-
> "tect, and if proper, *deliver the possession to the*
> *"one deprived."* (Alcubilla, Vol. 3, p. 357.)

So far as the decree attempted to determine or affect the ownership of the spring at Sibul, situated within the property in question, it was also in violation of the Law of Waters of June 13, 1879, which provided in Art. 254 (Alcubilla, Vol. 1, p. 307):

> "To the Tribunals which exercise civil jurisdiction
> "belongs the cognizance of questions relating:
> "1. To the ownership of public waters, and to the
> "ownership of private waters and their possession."

It was held by the Spanish authorities that under this law any question turning upon the ownership of either public or private waters came "solely within the cognizance of the Tribunals" of ordinary jurisdiction, and was not a matter for discretionary administrative determination—"*via gobernativa,*"—or for the administrative tribunals–"*jurisdiccion contenciosa administrativa.*" (See Royal Order of January 30, 1885, Alcubilla, Vol. 1, p. 364). The discussions below as to the effect of the failure of Mercado or his grantee to resort to the administrative tribunals to review the decree of annulment seem therefore somewhat beside the mark. In the opinion of the learned Chief Justice below it is recognized that the "contentious administrative jurisdiction" did not apply to "actions which treat of the ownership of national properties, or whatever other rights may be based on titles prior or

subsequent to the sale, that is to say *independent*" (Rec., p. 83). In the present case Mercado's ownership existed prior to the issue of the deed and was independent of it, and consequently recourse to the "contentious-administrative jurisdiction" would have been inappropriate and unavailing. The Court below also recognized that the decree of March 5th, 1886, "*was not one within the discretionary powers* of the Governor General of the Philippines" and hence "not susceptible of appeal in accordance with Art. 7 of the Royal Decree of June 7, 1878," that is to say by the "*via gobernativa*" (Rec., p. 84). It is immaterial what Mercado might have done by recourse to the ordinary civil courts. He did not follow this course, and there was no occasion for him to do so, since his right of ownership was based on possession and his possession was not disturbed.

It is also to be observed that "mineral-medicinal waters" are governed by the same rules as any other springs, and primarily belong to "the owner of the land in which they rise," under Art. 16 of the Law of Waters. (Alcubilla, Vol. 1, p. 289.)

The conclusion that the decree of March 5, 1886, has the "authority of *res adjudicata*" (Rec., p. 85), is wholly erroneous. As has been shown, the Governor General was not a tribunal having jurisdiction to determine a question of ownership. Moreover, it does not appear that Mercado was a party to the application of Pengson in regard to the three deeds, or was in any way represented or heard therein, and it does affirmatively appear that Roura, to whom the ownership, possession and paper title had passed at the time of such decree, was never brought into the proceeding. No notice of it ever reached him, so far as appears by the record, and none reached his devisees until several years later. An executive declaration, made without jurisdiction, contrary to the Spanish Constitution and general laws, in an administrative proceeding to which the then owner and possessor of the land was not a party, falls far short of the requirements of *res adjudicata* under any civilized system of law and procedure.

The suggestion that because the decree of annulment purported to be made in the exercise of administrative functions the Spanish tribunals would not have had the power to examine its validity and determine against it (Rec., p. 77), fails to take into consideration the provision of the Spanish Constitution quoted above, which expressly commits to the "*judges*"—the ordinary Courts—the protection of private property rights against executive encroachment. Moreover, whatever the Spanish Courts could have done or would actually have done in the matter, surely our Courts can examine such a question and determine it. This Court did so in Camou *v.* United States, 171 U. S., at p. 290, where an executive decree of Santa Anna, the dictator of Mexico, was held void and ineffectual to divest property rights. In the case at bar, the Court below recognized that the "Supreme Court of the nation" might exercise such a power (Rec., p. 77), but questioned and apparently disclaimed its own power in the premises. But this Court can only do so on appeal, and what this Court can do to correct an error surely the Court below can do to avoid one. The invalidity of the decree of annulment was recognized by the Spanish Council of Administration (Rec., p. 33), and doubtless for this reason the Spanish Government did not proceed further upon it. The Court below did not attempt to justify it as valid, but nevertheless made it effective, something that the former Government had never undertaken to do.

The Court of Land Registration, by the Act which created it, has jurisdiction "to hear and determine all questions arising upon" applications for registration (Act 496 Phil. Com., Sec. 2). Where title to land is derived through administrative proceedings, as it must be in many cases in the Philippine Islands, the Court must have power to pass upon their validity. If it can adjudge that administrative proceedings purporting to confer title were valid and effectual it certainly can also adjudge that administrative proceedings purporting or claiming to divest title were invalid and ineffectual. Any other rule would work wholesale injustice, and require

the Courts of the present régime to perpetuate spoliations which the former Government has announced on paper but never carried out in fact.

V.

The plaintiffs' ownership of the land was a property right protected by the Treaty of Paris and the Organic Act of July 1st, 1902.

This proposition is so fully established by the decision in the Cariño case, that argument thereon would seem superfluous. By their long possession the plaintiffs were owners—"proprietors for all legal effects"—under the Spanish law. The Treaty of Paris expressly recognizes and safeguards all "rights which by law belong to the peaceful possession of property of all kinds" (Art. VIII). The Organic Act of July 1st, 1902, by Sec. 5 provided that "no law shall be enacted in said islands which shall deprive any person of life, liberty or property without due process of law, or deny any person therein the equal protection of the laws," thus expressly extending to the Philippine Islands the ~~beneficent~~ benefit guarantees of the Fifth Amendment of the United States Constitution, whether it "followed the flag" thither or not. The legislation of the Philippine Commission (Acts 496 and 926), made ample provision both for the registration of good titles and the perfecting of incomplete titles. By sub-division 6 of Sec. 54 of the Public Land Act (Act 926 Phil. Com.), all persons who can show ten years' possession are "conclusively presumed to have performed all the conditions essential to a Government grant" and are "entitled to a certificate of title" from the Court of Land Registration. Upon this alone the plaintiffs were entitled to registration, without regard to the Spanish law

of prescription, and wholly eliminating both the "composition deed" and its annulment.

If the Insular Government requires this Sibul Spring for public purposes, it has the power of eminent domain and can acquire the Spring by due process of law and payment of compensation. Even the Spanish Governor General's decree of annulment was expressly made "without prejudice to the indemnities which may subsequently be made, if any private party should prove that land belonging to him has been occupied" by the proposed sanitarium (Rec., p. 34). This, at the worst, was an inverted variety of condemnation proceeding. It was not confiscation. Is the Insular Government, representing the power of the United States, to be allowed to ride roughshod over rights which the Spanish régime respected? We ask this Court to prevent such a perversion of the declared purpose of the United States in their occupation of the Islands.

Conclusion.

The judgments of the Philippine Supreme Court and of the Court of Land Registration should be reversed and the cause remanded with instructions to award the registration prayed for by the plaintiffs in error.

Respectfully submitted this seventh day of September, 1910.

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Supreme Court of the United States.

OCTOBER TERM, 1910.

Office Supreme Court, U.
FILED.
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JAMES H. McKENNE

No. 35.

MARIA ROURA and JUANA ROURA,
Plaintiffs in Error.

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

In Error to the Supreme Court of the Philippine Islands.

BRIEF IN REPLY FOR PLAINTIFFS IN ERROR.

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No. 35.

MARIA ROURA AND JUANA ROURA, Plaintiffs in Error, *vs.* THE GOVERNMENT OF THE PHILIPPINE ISLANDS.	In Error to the Supreme Court of the Philippine Islands.

Brief in Reply for Plaintiffs in Error.

The brief submitted on behalf of the Government in this case so completely fails to meet on the merits the claim of plaintiffs in error to title by prescription, and is so largely devoted to what seem to us immaterial questions of Spanish administrative procedure, that very little reply appears to be necessary. There are a few points, however, in which the Government's brief might tend to give the Court a mistaken impression of the state of the record and the real issues of the cause, and to these we shall briefly call the Court's attention. They relate to three subjects:

I.—The jurisdiction of this Court;

II.—The claim of title by prescription;

III.—The effect of the decree of annulment.

I.

The jurisdiction of this Court.

The Government claims that this case involves neither the jurisdictional amount nor a jurisdictional question.

It seemed to us so obvious that both grounds of jurisdiction were present that we treated this question very summarily in our former brief. Since the question is raised, it will now be discussed further.

A. *The Jurisdictional Amount.*

In the Court of Land Registration the value of the land was immaterial, and the plaintiffs contented themselves with showing its assessed value for taxation purposes. Naturally no issue was raised on this point and neither of the Courts below made any finding thereon. As the affidavits of value filed in this Court explain, the tax valuation of land in the Philippines is no fair criterion of its actual value;—a state of affairs by no means exceptional. Moreover, the tax valuation was of a date at or before the beginning of the proceeding, while the value now material is that at the date of the judgment under review, as held by this Court in Street *v.* Ferry, 119 U. S., 385. That there should have been a marked rise in value during the course of the proceeding is quite natural, and the reasons therefor are explained in the affidavits;—greater facilities of communication and a greater appreciation of the therapeutic qualities of the Sibul Spring. The affidavits of value not being denied under oath, the value as stated therein is to be deemed sufficiently proved (Whiteside *v.* Haselton, 110 U. S., 296). Even where there are conflicting affidavits, an appeal is not to be dismissed because the Court might possibly reach the conclusion that the appellant's estimate is too high (Gage *v.* Pumpelly, 108 U. S., 164).

B. The Jurisdictional Questions.

This Court based its decision in the Cariño case largely on the effect of the Organic Act as showing what rights the United States intended to claim in the Philippine Islands, especially in respect to lands held by the inhabitants thereof under a claim of title resting on possession. (See 212 U. S., 449, at pp. 458, 459.) This Act

embodied in a statute one of the guaranties of property rights contained in the Treaty of Paris. Precisely the same question is presented here, and therefore, the effect of both the Treaty and the Act is involved, as well as that of the analogous provision in the Fifth Amendment of the United States Constitution, which must be deemed to apply in the Philippines as an inherent limitation of the powers of the Government, accompanying it wherever it goes (See Downes *v.* Bidwell, 182 U. S., 244, at pp. 268, 277, 294).

Doubtless, as the learned Assistant Attorney-General contends, a writ of error would not lie from this Court to review a judgment settling a dispute between two inhabitants of the Philippine Islands about the title to a horse, it being necessarily assumed that both claimed by purely private sources of ownership. But that is very different from a case where the Government has successfully set up a claim to public ownership of land, in contravention, as plaintiffs assert, of the Treaty, the Organic Act and the Constitution.

Thus, both in amount and in subject matter, the jurisdictional requirements are fully met.

II.

The claim of title by prescription.

The Government claims that the present assertion of ownership by prescription is a variance or departure from the plaintiffs' claim in the Courts below, and therefore inadmissible. Even if it were now set up for the first time, it is in no wise inconsistent with the plaintiffs' position below, and it is surely open to them to advance additional legal arguments, based upon the facts originally pleaded. But, as a matter of fact, this claim is found at the very outset of the proceeding. The Statute (Act 496, Phil. Com., Sec. 21) only required the plaintiffs to set forth their immediate source of title, which they did

by referring to the devise from their father, and his purchase from Mercado (Rec., p. 2). Upon this it was open to them to sustain the earlier title by any arguments which might be applicable. But they went further than this; they annexed to their petition the documents showing the thirty years' possession by which Mercado had acquired his ownership by prescription under the existing provisions of the Spanish law. They thus planted themselves firmly upon a prescriptive title at the very start, and that they did not press this point more vigorously below is doubtless due to the fact that the doctrine of Valenton *v.* Murciano (3 Phil. Rep., 537),—*viz.*, that prescription alone, without a Government deed, was insufficient to create an indefeasible title,—had not yet been overturned by this Court, and was still followed in the Philippine Islands.

The quotation in the Government's brief at pages 4 and 5 is merely from the oral argument in the Court of Land Registration, and it does not waive, either expressly or by implication, any other grounds for supporting the title which may be found in the petition, its annexes, or the record generally. The Court of Land Registration in fact expressly recognized that Mercado had acquired title by prescription, but held that the decree of annulment was effective to divest it (Rec., p. 63).

The assignments of error below are broad enough to cover the question (Asst. III, Rec., p. 71, Assts. 3-8, Rec., p. 89), and it is also presented by the 3d and 4th Specification of Errors in our Main Brief (p. 4).

The evidence of possession, while not so detailed as in the Cariño case and the Reavis case, was ample and uncontroverted, and was accepted by the Courts below. The "Certificate of the Petty Governor and Leading Citizens" was annexed to the original petition and thus formed a part thereof and did not need to be separately offered in evidence. It is found twice in the Record (pp. 5, 6 and 46). It was not objected to, and was accepted by the Courts below as competent and sufficient. The Court of Land Registration admitted that Mercado had

acquired title by prescription (Rec., p. 63), and the Philippine Supreme Court expressly found the fact of continuing possession (Rec., p. 68). The learned Assistant Attorney-General attributes this finding to the Court of Land Registration and styles it a "casual remark" (Government's Brief, p. 11), but this does not change its character or destroy its effect. It is perfectly evident that there was no controversy below as to the facts, and that the case turned wholly on the effect of the decree of annulment.

The Government also seeks to inject a new question of fact into the case by claiming that the identity of the land now sought to be registered with the land formerly possessed by Mercado does not sufficiently appear. But such identity was evidently admitted and assumed below. The discrepancies which the learned Assistant Attorney-General seeks to discover are wholly imaginary. Naturally where lands are described as bounded by those of adjoining owners, the names of the adjoining owners have changed after the lapse of twenty years. The two plans (Rec., pp. 8, 24), instead of differing materially, show a substantial identity of location and configuration, especially when the difference in scale (five to one) is considered, with the consequently greater details of the larger plan. The slight difference in area is of no importance, since the area now claimed is a trifle less than that of the earlier plan. The alleged conflict of description with the deeds to Pengson and to the Parochial Curate cannot avail the Government now. Pengson made an adverse claim in the present proceeding, but withdrew it, and is, therefore, concluded, and no other adverse claim has been made, the other neighbors evidently all recognizing the Rouras' rightful ownership.

It is also to be remembered that Mercado was a native Filipino (Rec., p. 4), and that in the case of native prescriptive titles, meticulous accuracy of delimitation is not to be expected or required (See Reavis *v.* Fianza, 215 U. S., 16, at p. 23).

III.

The effect of the decree of annulment.

The Government devotes much space and learning to an elaborate argument to the effect that the decree of March 5, 1886, was within the administrative powers of the then Government of the Islands, and could be reviewed only by the "contentious-administrative" procedure. This seems to us somewhat beside the mark. The question here is not whether the Spanish Governor General could or did annul the *deed*, but whether he could, by a mere administrative decree, divest an already acquired prescriptive *ownership*. This, we submit, he could not do under the law of Spain as already expounded in the decisions of this Court.

The reference in the Government's Brief (pp. 27-28) to a Spanish decision of 1849, in regard to the relative powers of the Courts and the Administration, is not in point, since this decision is based upon the Spanish Constitution of 1845 (Alcubilla, 5th Ed., Vol. 3, p. 336), which does not contain any provision, like that of the Constitution of 1876, committing to the Courts the protection of all rights of property (Main Brief, p. 12).

The numerous citations in the Government's Brief in regard to the proper method of reviewing the decree of annulment have no bearing on the questions here at bar. At the most they tend to show that the regular method for such review was by recourse to the Contentious Administrative Tribunal within 120 days after notification to the party aggrieved. Now, Mercado was not notified until after he had transferred the property, Juan Roura was never notified, Maria Roura was not notified until four years after the decree was made, when its purely "paper" character must have been apparent, and Juana Roura. the other plaintiff, was never notified at all, so that, as to her, the time to take such an appeal never even started to run while the Tribunal, to which the Government seeks to refer her, was still in existence.

Moreover, the authorities cited by the Government fully

recognize that the contentious-administrative procedure was inapplicable to questions of title arising independently of or prior to Government public auctions. Here there was no public auction and there was a title by prescription prior to and independent of the Government deed. Therefore under the Spanish law the question of such a title was cognizable only by the regular courts, just as it is under our system.

The Government Brief does not even attempt to answer our contentions as to the equity of the case, and relies almost entirely upon technicalities of Spanish procedure. Its general attitude is similar to that so vigorously assumed in the Cariño case, but so decisively rejected by this Court. As in that case, the Government seeks to proceed upon the theory that. in the "benevolent assimilation" of the Philippines, the physiological analogy should be followed even to the extent of commencing by deglutition, and once more we appeal to the judicial power for protection against such a fate.

Conclusion.

The contentions of the plaintiffs-in-error are unanswered and the judgments below should be reversed as heretofore prayed.

Respectfully submitted this 18th day of October, 1910.

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In the Supreme Court of the United States.

OCTOBER TERM, 1910.

MARIA ROURA AND JUANA ROURA, PLAINTIFFS IN ERROR,
v.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS. } No. 35.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANT IN ERROR.

I.

This court has no jurisdiction of the case, because:

First. *The real estate in question does not exceed in value $25,000.*

With reference to its value, it is alleged in the petition "that said property, according to the declaration for the purposes of taxation, is valued at $2,000 Mexican currency, equivalent to $900, United States currency." (R., p. 2.) The law in force in 1904 required property to be assessed at its full value. Petitioner, Maria Roura, in the declaration of ownership which accompanied the petition, declared under oath "that

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the true and just value of said real estate is ₱2,000." (R., p. 11.) Counsel for petitioners also introduced at the hearing the affidavit of two residents of San Miguel, who swore that the actual value of this land, according to their best knowledge and belief, is $2,000 Mexican currency, equal to $900 gold. (R., pp. 14 and 25.) Since the case has reached this court affidavits have been filed to show that the land in question is worth more than $25,000; that is, that the sworn statements of plaintiff, Maria Roura, and her attorney and witnesses fixed the value of the land at less than 4 per cent of its actual value. Such a contradiction of plaintiff's own evidence should not be permitted; but it is apparent that the values mentioned in these affidavits are not real, but purely speculative and based on the supposed medicinal properties of the spring. That it is purely guess and not substantial is shown by the fact that in two affidavits the value of the land in 1904 is fixed at $30,000, while in another it is fixed at $50,000, a difference of $20,000; and one of these affiants who thinks the land was then worth $30,000 thinks it is worth the same now, while another claims it is worth $50,000. Such imaginary estimates should be given little or no consideration.

Second. *No provision of the treaty of Paris or of the Constitution, or of the organic act of the Philippine Islands is involved.*

The question presented is whether the appellants are "the owners in fee" of the land described in the

petition. Neither the treaty of Paris, nor the Constitution of the United States, nor the organic act of the Philippine Islands can be looked to to determine that question, but it depends entirely on the law as it existed in the Philippine Islands before their acquisition by the United States. It had as well be said that a writ of error would lie to this court from a judgment settling a dispute between two citizens of the Philippines about the title to a horse. In such case the owner is as much guaranteed protection in the ownership of his property as appellants are guaranteed protection in the ownership of the land in question. There the question would be which of the contending parties owns the horse; here the question is whether the appellants or the government of the Philippine Islands owns the title to this land.

II.

Before plaintiffs can have title to the lands described in their petition registered, they must show affirmatively that they are the owners of such title.

This application is made under act No. 496 of the Philippine Commission (Pub. Laws Phil. Com., vol. 11, pp. 85–118); and by section 19 (p. 89) of said act it is provided that the application for registration may be made by the following persons, namely: "First. The person or persons claiming, singly or collectively, to own the legal estate in fee simple." By section 38 it is provided:

> If the court after hearing finds that the applicant has title as stated in his application

> and proper for registration, a decree of confirmation and registration shall be entered.

And by subsequent provisions in this section the decree for registration is made far more binding against all persons, whether parties to the action or not, than is judgment at common law or under the statutes of many States in an ejectment case against an actual party to the suit. Therefore the same rule must here apply as exists in an ejectment case; and if plaintiffs fail to prove title in themselves for the particular tract described in the petition their application must be rejected, though the title may be in some other person than the Insular Government.

III.

Plaintiffs can not here rely upon a title acquired by prescription, but if they be allowed to do so they have wholly failed to prove such title.

First. *No such title was relied upon in either the Court of Land Registration or in the Supreme Court of the Philippine Islands.*

In the Registration Court counsel for the petitioners stated their contention in the following language:

> The right which his principals invoked was derived from the right of the original owner, Don Jose Mercado, who acquired the same by virtue of the grant made by the Council of Civil Administration for a stipulated sum, in exchange for the parcel of land. The deceased, Juan Roura, father of the petitioners,

acquired possession of this land by virtue of a deed of sale executed by Don Jose Mercado in his favor, and from him the petitioners inherited the same. After some time had elapsed the general government annulled that title by grant without returning the money consideration for the land, and without previously hearing the defenses which the aggrieved owner might set up, when, as a matter of fact, this matter ought to have been heard before a competent court. This is not legal; it is an embezzlement, since it can not be conceived that after the possession of this real estate had been lawfully granted and the cost thereof had been paid to the satisfaction of both parties, as is witnessed by the documents in evidence, all of the transaction should be afterwards retroactively annulled.

These points having been explained he requested the registration of the property in the name of his clients. (R., p. 16.)

Likewise in the assignment of errors in the Supreme Court of the Philippine Islands the question whether plaintiffs had acquired the title by prescription was not raised (R., p. 7); and the question was only casually mentioned by that court at the close of its opinion. Nor do the assignment of errors filed in this court specifically rely upon a title acquired by prescription, or question the judgment of the court below on that ground. (R., p. 89.)

Now in argument for the first time it is insisted that plaintiffs in error have shown title by prescrip-

tion, and that the validity or invalidity of the decree of the Governor-General is immaterial.

Second. *There is no evidence in the record to support the contention that Jose Mercado or plaintiffs, or their ancestor, Juan Roura, acquired title to this land by prescription.*

The following are the references in the record to the question of possession. Counsel for plaintiffs in stating his contention to the Registration Court said: "The deceased, Juan Roura, father of the petitioners, acquired *possession* of this land by virtue of a deed of sale executed by Don Jose Mercado in his favor and from him the petitioners inherited the same." (R., p. 16.) This was a mere statement of counsel made in argument, and of course is not evidence. Furthermore *there was not a witness introduced in the Court of Land Registration who was asked a single question about the possession of the land.* The entire evidence consisted of records and written documents, petitioners offering their several title papers, which had their origin in the deed from the Director-General of Civil Administration to Jose Mercado and proceedings authorizing the same, and the Insular Government offering the decree of the Governor-General annulling said deed, and the various orders and reports made with reference thereto. *As a part of this paper title* and as a foundation for the deed executed by the Director-General of Civil Administration to Jose Mercado on October 19, 1885, there was attached as Exhibit "C" to the petition a certificate issued by the acting petty governor of the pueblo of

San Miguel de Mayumo, Province of Bulacan, in favor of Jose Mercado on May 3, 1885, and in this certificate he recited that Jose Mercado "manifests that he holds and possesses as his property" the certain lands described therein; and that "said parcels of land are found in his pacific possession for more than thirty years without interruption of any kind;" and further "the commune of leading citizens (thirty being named) having been united and the petition of Mercado having been heard, they stated unanimously that what is set forth by the party appearing is certain and true; that said parcels of land have been cultivated and possessed for more than thirty years from this time." (R., pp. 5 and 6.) But, as stated, this was not offered for the purpose of proving possession, but was attached to the petition to show that the prerequisite to the execution of the deed to Mercado had been complied with. It in fact was not offered by petitioner in evidence at the trial at all, and was not a part of the bill of exceptions. However, another copy appears in the bill of exceptions as a part of the record of the entire proceedings relating to the issuance of the deed to Jose Mercado and deeds to two other parcels and their annulment (R., p. 46), which record was introduced by the Insular Government.

The recitals of this certificate are of course incompetent in this case to prove title acquired by possession as a distinct ground of action, one independent of the deed executed to Mercado, and in this litigation are purely hearsay.

It may be insisted that the Philippine government is estopped to deny the possession recited in this certificate, inasmuch as it accepted and acted upon it in issuing the deed to Mercado. But not only was this deed itself nullified by the Governor-General's decree of March 15, 1886, but "*all which was done in the respective proceedings*" (R., p. 36) were likewise annulled; and this certificate, being a part of those proceedings, its recitals were therefore rejected and declared void. If, therefore, the decree of the Governor-General was valid, or became valid because proper action was not taken to avoid it, this certificate and its recitals are void for all purposes; but if the decree was and remains a nullity, then both Mercado's deed and this certificate of the petty governor are valid; and whether or not this certificate may be considered for any purpose depends, after all, upon the only question presented and considered by the courts below, to wit, the validity of the Governor-General's decree.

On November 11, 1890, the chief clerk of the civil government of the Province of Bulacan, directed the petty governor of San Miguel, in conjunction with the commune of the municipal authorities of this pueblo, to report the data which existed in his tribunal "concerning persons who may have at any time claimed rights in the lands of the Sanitarium of Sibul, time when they made the same, and the determination had concerning the claims, as well as "*who are the present possessors of the land in the immediate vicinity of said sanitarium for a distance of 150*

meters approximately." (R., p. 43.) On the question of possession they reported that the "municipal authorities say that there is no person who possesses lands of the sanitarium within 150 meters of the spring, with the exception of the lot occupied by the house of the deceased Jose Salcedo, at 37 meters toward the east from said spring, * * * and although the parcel of land of Jose Mercado is found included at a distance of less than 150 meters toward the north, the title covering the same was annulled, as has been stated." (R., p. 44.)

Document No. 4 which accompanies this report is a certificate dated April 22, 1885, which recites that the persons named appeared at the instance of Juan Roura in order that they might state "who is found at the present time in possession of the lands of Sibul whose boundaries are the following [description same in substance as in the Mercado deed], and second whether they know that the said Don Jose has cleared said land, and third whether they have knowledge that Regino Pengson endeavored to take away possession of said lands from Jose Mercado;" their answers were "that *at the present time* Jose Mercado is in the possession of said lands. To the second question they answered that they have not seen Jose Mercado clear said land, but that it was clear when he was occupying it, and was continuing cultivating *a part thereof*, sowing rice; and to the third question that they did not know whether Regino Pengson attempted to take away the possession of the land from Jose Mercado." (R., p. 47.) This

report and the documents accompanying it were parts of the record of the former proceedings, and, as above stated, their recitals can not be considered as evidence in this case of the existence of the facts recited. Furthermore, on the question of possession the decree of the Governor-General recites as a reason for revoking the deeds of Mercado and others that it was found "that the Sibul Spring has never been known as private property, nor is it included in land which may have been this character, but rather *that those medicinal waters have been utilized without any hindrance or obstacle, not only by the residents of the pueblo but by the public in general, as is evidenced amongst other things by a certificate of the municipal authorities of San Miguel de Mayumo, and is confirmed by the unanimous and universal voice of the pueblo;*" and further that "the data which appear in the notes of survey and measurement of the lands and the plans which accompany them are not correct and consequently the title deeds issued do not describe the lands such as they really are," showing that a statement by a party that Jose Mercado was in possession of the land described in his deed is not evidence that he was in possession of the land as actually located and as now claimed by plaintiffs. With the record in this condition counsel for plaintiffs assert as an undisputed fact that "for more than thirty years prior to 1885, Jose Mercado, who was apparently a farmer, had been in peaceful possession, without interruption of any kind, of the land in question, and had cultivated the same;"

and relying solely upon a casual remark of the Court of Land Registration that "the plaintiffs allege and prove, by means of the will and testament of their father, Juan Roura, their hereditary title by *virtue of which they have continued in possession of the land acquired by their father;*" there being neither evidence nor a recital in any document to support this last statement, they say "a continuance of possession of about fifty years is thus established over thirty years prior to 1885, and nearly twenty years from that date to the presentation of the application." And citing this same remark of the court as evidence of the fact, they further say that after notice was given to Maria Roura in October, 1890, "nothing further was done, *and the Rouras were left in undisturbed physical possession, which continued until the present time.*" (Brief for plaintiff, pp. 2, 3, and 4.) And, moreover, the statement of the same court in another part of its decision that "it has not been proved that there had been exercised either before or after the declaration of nullity of the title any possession act on the part of the petitioners or of their predecessor," is characterized as "simply contrary to the record and to the whole tenor of the decision itself," the declaration of the commune of citizens which, as above shown, is not evidence in this case, being relied upon to sustain the assertion.

Counsel also says, "No notice of any objection to the deed appears to have reached either of the plaintiffs until four years later (after the decree of annulment), and then their *possession* was not

challenged." (Brief, p. 10.) Maria Roura did not then claim to have possession of the land. Her answer to the order to deliver the deed was, "I would state that during the lifetime of my father I heard said title deed of Sibul mentioned, but at the present time I am ignorant of its whereabouts; that is all that I can say." (R., p. 58.) The plain inference from this statement is that neither she nor her father had ever had possession of the land. The records in the cases of *Carino* v. *Insular Government* (212 U. S., 449), and *Reavis* v. *Fianza* (215 U. S., 16), in which titles by prescription were maintained, were in an entirely different condition. In the former the facts found by this court on the question of possession were:

> The applicant and plaintiff in error is an Igorot of the Province of Benguet, where the land lies. For more than fifty years before the treaty of Paris, April 11, 1899, as far back as the findings go, the plaintiff and his ancestors had held the land as owners. His grandfather had lived upon it, and had maintained fences sufficient for the holding of cattle, according to the custom of the country; some of the fences, it seems, having been of much earlier date. His father had cultivated parts and had used parts for pasturing cattle and he had used it for pasture in turn. They had all been recognized as owners by the Igorots, and he had inherited or received the land from his father in accordance with Igorot custom. (212 U. S., 455–456.)

And in the latter the finding of facts was:

> It can not be said that there was no evidence of the facts found, for the plaintiff Fianza testified, in terms, that his grandfather and father had owned the mines in question and that he and the other appellees owned them in their turn, and they had all worked the mines, that no one else had claimed them, and that the appellant had interfered with his possessions, and when he put up a sign had torn it down. No doubt his working of the mines was slight and superficial according to our notions, and the possession may not have been sharply asserted as it would have been with us, whether from Iggorrot habits or from the absence of legal title under Spanish law. But it sufficiently appears that the appellees' family had held the place in Iggorrot fashion, and to deny them possession in favor of western intruders probably would be to say that the natives had no rights under the section that an American was bound to respect (215 U. S., 23).

In each of these cases more than one hundred printed pages of oral testimony was introduced in the trial, much of which related to the question of possession.

This matter has been gone into at such length because counsel for plaintiff here rest their case almost entirely on a claim of title by prescription; and it was thought desirable that there should be presented in a succinct form all references in the record to the possession of the property. For how long a time it is necessary to prove possession

in order to acquire title by prescription this court has not yet said. By section 5 of the Regulations of June 25, 1880, it was provided that possession of land without title for twenty years if cultivated, or thirty years without cultivation, was sufficient to entitle one to a deed executed after certain proceedings had been had. In *Carino* v. *Insular Government* (212 U. S., 449) the court held that this provision was a recognition of the fact that title could be obtained by prescription, but did not hold that possession for the time specified would of itself, without a resort to the proceedings therein specified, vest title. In that case actual possession for more than fifty years was proven and was held sufficient.

IV.

The record does not show that the tract of land, the title to which they seek to have registered, is the same tract for which deed was executed to Jose Mercado, and of which they claim that said Mercado held possession.

There is no intimation in any of the records that Jose Mercado had possession of any lands other than those described in the deed executed to him on October 19, 1885. Have the plaintiffs shown that the tract which they now claim is the same as the one described in the deed? *There is not one word of oral testimony upon the subject;* and the documentary evidence not only fails to show that the two tracts of land are the same, but clearly

shows that they are not identical. In introducing his documents as evidence, the attorney for plaintiffs stated that the second parcel in the title deed is the tract which is the subject of the proceeding. (R., p. 147.) While this statement of the attorney is not evidence, yet it serves to identify the description in the deed upon which plaintiffs rely. The descriptions in the Mercado deed and in the petition are as follows:

> On the north, in deed, "the estro of Sibul and lands of Ambrosio Pengson;" in the petition, "in part, by the property of one of the petitioners, Maria Roura;" on the east, in deed, "lands of Regino Pengson;" in petition, "by the land of Modesta Pengson, formerly of her deceased father, Regino Pengson;" on the south, in deed, "lands of Friar Alejandro Hernandez and Regino Pengson;" in petition, "by land of Don Rafael C. de Yuchausti, formerly of Friar Alejandro Hernandez, who was the parochial curate of San Miguel;" on the west, in deed, "the estro of Sibul and lands of Friar Alejandro Hernandez;" in the petition, "by the Sibul Estero." (R., pp. 2 and 22.)

While there are material discrepancies between the two descriptions, yet if there were nothing else in the record it might be supposed that these discrepancies could be explained away by oral testimony, which, however, there was no attempt to do. But in the proceedings to procure title to the land it was required that a plat of the land should be

filed. And it is likewise required that in proceedings to procure the registration of title to land a plan thereof shall accompany the petition. (Pub. Laws. Phil. Com., 496, sec. 26.) Both of these plats appear in the record, the one with the petition opposite page 8, and the other with the deed opposite page 24, the tract in question being represented by the lower figure on this plat. A glance at the two figures shows that there is no similarity whatever beween the two tracts. It is true that when plaintiffs' attorney offered the plat which accompanies the deed he remarked, "Concerning the plan, I should call attention to the fact that the land situated in the northern part is not included in this petition. I make this exception for purposes which may follow" (which statement of course is not evidence). Yet, with the northern part of this tract cut off, there is no identity whatever between the tracts represented by the two plats. In the older plat there are six sides, while in the later one there are eight, and apparently there is no line of the one of the same length or on the same degree as any line on the other. How, then, can the description in the deed, and on the plat filed herewith, which is the tract the plaintiffs claim Mercado had possession of, possibly authorize registration of title to the tract described in the petition and represented by the plat accompanying it? It was indeed for this very fact that the Governor-General annulled the Mercado deed, because it did not describe the land as it was located on the ground.

V.

There was conflict of title in the deeds executed to Mercado, Regino Pengson, and the parish priest of San Miguel, the latter title being the older, and not only was Mercado's deed void to the extent of the conflict, but it being impossible for them all to have possession of the same land at the same time, any presumption of possession or of title that might be acquired by possession, which might otherwise have arisen, is thereby destroyed.

The deed to Alejandro Hernandez was dated September 25, 1885, while the deed to Mercado was executed on October 19, 1885, and the one to Regino Pengson was dated November 9, 1885. (R., p. 43.) The record does not show the extent of this conflict, but in the report of the petty governor and the commune of municipal authorities of the pueblo of San Miguel to the civil governor of the Province of Bulacan it was recited that in different months of the year 1885 "Don Jose Mercado, Don Juan Roura, Don Regino Pengson, and Don Alejandro Hernandez, who was parochial curate of the pueblo, *respectively claimed rights to the lands of the sanitarium*," * * * and title deeds were issued by the general directorate to the said Mercado, Pengson, and Hernandez, and were executed under the dates above mentioned. (R., p. 43.) It was in consequence of a proceeding instituted by Pengson that the three deeds mentioned were annulled. In fact, in the beginning of the present proceedings, Doña Modesta Pengson (daughter of

Regino Pengson) and husband appeared as opponents, the latter stating in the name of his spouse that she considered herself owner inasmuch as she possessed a title deed issued by the Spanish Government. (R., p. 13.) Consequently, if the recitals of documents in the record and statements of parties can be looked to to establish facts, it clearly appears that each of the three parties mentioned had a deed from the Spanish Government covering the same lands, including the sanitarium, which is the important part; and plaintiffs can not here prevail, because the burden of proof is upon them to show to the court the precise boundaries they claim, and they have failed to show the limitations of the conflict, and therefore the tract, the title to which they (with other questions out of the way) otherwise would be entitled to have registered.

VI.

The decree of the Governor-General of March 15, 1886, annulling the deed to Jose Mercado of October 19, 1885, was valid and destroyed all title that Jose Mercado and those claiming under him might otherwise have had in said land.

As the questions relating to the effect of the decree of the Governor-General will probably be presented in argument they will be considered in this brief.

First. *Statement of facts.*—The facts about the issuing of this deed to Mercado, and its revocation are as follows:

Mercado appears to have had a survey of the land made by one Jose Mereno, a public official, and a

plat of same was prepared, and with proof of possession deemed sufficient, was presented to the Director-General of Civil Administration, who, supposing the same was regular, issued the deed to Mercado on October 19, 1885. (R., p. 22.) In the same way the parish priest and Regino Pengson obtained deeds, one on September 25, 1885, and the other on November 9, 1885. Pengson thereupon filed a claim with reference to these lands before the general directorate of civil administration, the same body which had ordered the issuance of the deeds, and that body ordered a revision, or manifestly a resurvey of the lands, which was done by the engineer in chief of the forest division of Central Luzon; and it was then ascertained that a fraud had, with the connivance of the surveyor, been perpetrated on the government, in that the boundaries as described in the deeds and shown by the facts did not correspond with their actual location on the ground, they having been so located as to include the Sibul Spring, which was supposed to possess valuable medicinal qualities, and was regarded as very valuable to the public. When the general directorate of civil administration, before whom the entire proceedings in issuing the deeds, and subsequently at the instance of Pengson ordering a revisal thereof, had been had, reported the facts to the Governor-General, he, on March 5, 1886, about five months after the Mercado deed had been issued, ordered the annulment of all of them, which order was entered on March 15, 1886. (Rep. of inspector of unreclaimed lands, R., pp. 40 and 41;

report of petty governor and commune of municipal authority, R., pp. 43 and 44; decree, pp. 35 and 36.) The grounds upon which the deeds were annulled are thus set forth in the decree:

> Account having been given by this central office to his excellency the governor-general of the proceeding instituted by Don Jose Fores on behalf of Don Regino Pengson relative to a claim of lands granted by composition in the barrio of Sibul, pueblo of San Miguel de Mayumo, it being found that not only the land granted to the aforesaid Pengson, but also those granted to Jose Mercado and to the parish priest of San Miguel, do not agree in their location or boundaries with those set forth in the title deeds issued by this general directorate under date of November 9, October 19, and September 25 of last year, respectively, and that these differences originate in errors committed by the expert appraiser of lands, Don Jose Moreno, when he practiced the acts relative to said lands in the capacity of acting deputy of unreclaimed lands. And it being found that the Sibul Spring has never been known as private property, nor is it included in land which may have this character, but rather that those medicinal waters have been utilized, without any hindrance or obstacle, not only by the residents of the pueblo but by the public in general, as is evidenced amongst other things by a certificate of the municipal authorities of San Miguel de Mayumo, and is confirmed by the unanimous and universal voice of the public, and it being

found that the general inspection of unreclaimed lands and this general directorate have been taken unawares by the aforesaid expert to issue, as they did issue, by virtue of the surveys made by him, titles of ownership by composition of the lands bordering upon the Sibul Springs by reason of which it might be believed that the spring is found included within some of them, and that the public and free zone which all springs have and need for their enjoyment had disappeared, and considering that the three proceedings referred to embrace a vice of nullity from their beginning, because the data which appear in the notes of survey and measurement of the lands and the plans which accompany them are not correct, and consequently the title deeds issued do not describe the lands such as they really are, and considering that the party responsible for this discrepancy is the expert, Don Jose Moreno, who, when called to explain the errors committed by him, has not done so satisfactorily, errors all the more inexcusable in that there are involved parcels relatively small and contiguous and surveyed and measured with an insignificant lapse of time between one and the other, giving rise to the suspicion that said errors have not been caused solely by neglect nor lack of zeal, but voluntarily and with knowledge of the mistakes which are contained. And considering that it has been once proved, as it has, that the ownership of the medicinal springs of Sibul does not belong to a private party, but to the State, it is necessary that the administration lend its support in consti-

> tuting those establishments that control and that vigilance which the culture of the country, hygiene, and even humanitarian sentiments exact, contributing in this manner to the generalization and increase of the use of waters so salubrious;

and the decree annulled the deeds and "all which was done in the respective proceedings," authorized a new composition of the lands after surveying out "whatever appurtenances a modest but decent sanitarium requires," and Jose Moreno was deprived of his office. (R., p. 36.) On March 23 Jose Mercado was officially notified of the decree and demand was made for the deed, but he said he had sold the land and had delivered the deed to the purchaser, whose name he did not give. (R., p. 53.) On April 5, 1886, an attempt was made to find out from Mercado who the purchaser was, but the constable of Sibul reported that he was in another province. (R., p. 54.) The matter was again taken up in 1890, and Jose Mercado having died, his spouse was notified to appear, which she did on October 27, 1890, and stated "that by reason of litigation having been commenced concerning said lands her spouse delivered said title deeds to the deceased Spaniard, Juan Roura, who was a resident of this pueblo, and who, in the name of the former, had charge of the affair," and that it should be found in the possession of Juan Roura's daughter, Maria. Finally on October 29, 1890, Maria was reached, and she stated "that during the lifetime of my said father I heard

said title deed of Sibul mentioned, but at the present time I am ignorant of its whereabouts." (R., p. 58.)

The record clearly shows that a deliberate fraud upon the government was intended; and there can be no other inference than that the parties well knew of the Governor-General's decree and purposely avoided giving up the deed. The extent of the fraud is strongly emphasized by the affidavits filed in this court to show jurisdiction. If they are to be believed, a spring, worth from $30,000 to $50,000, was included in Mercado's deed; and it is pretended that he had acquired a private right to that spring by possession, when it was shown that the public had always had access to it. The court's attention is specially called to the fact that Mercado gave nothing for the land, but claimed it solely by prescription.

Second. *The decree was within the jurisdiction of the Governor-General.*

Such power would not be considered unreasonable or arbitrary in our own Government. It would find its equivalent were the Secretary of the Interior authorized, within a limited time, to examine into the issuance of a patent for public lands, and, if he should find fraud sufficient to justify its revocation, report the matter to the President for its annulment. But the question must be approached from a standpoint entirely different from that in which one would consider the powers of the President of the United States and his relations to the Federal judiciary. There all power was inherent in the Crown, of which

the Governor-General was the representative, and the question is how far the Crown had relinquished that power and vested it elsewhere; and if no royal decree can be found whereby the power here exercised had been remitted by the Crown, it was the prerogative of the Crown to continue its exercise. The broad powers vested in the Governor-General are shown by Article I of the Royal Decree of June 9, 1878 (Alcubilla, vol. 5, p. 854):

> *The governor-general is the superior authority, representative of the Government of the nation* in the island of Cuba, and delegate in it of the ministries of colonies (*Ultramar*), of state, of war, and navy. He moreover exercises, as patron viceroy, the functions inherent to the patronate of the Indies (*Patronate de Indias*), in conformity with the Pontificial Bulls and the laws of the Kingdom. His authority extends to all which is conducive to the preservation of public order, to the maintenance of the integrity of the territory, to the execution of the laws, and the protection of persons and property.
>
> He is in superior command of the army and navy of the islands, and disposes of the forces on sea and land subject, respectively, to the general ordinances of the navy and to the prescriptions which govern in the branch of war. *All other authorities of the island are subordinate to him.*

This decree was made applicable to the Philippine Islands by royal decree of November 8, 1878, which reads as follows:

To the Governors-General of the Philippines and Porto Rico:

I declare the royal decree of June ninth, 1878, effective in the Philippines and Porto Rico.

The deed or grant to Jose Mercado was issued under an order or decree of the general directorate of civil administration. This power was vested in that body by article 11 of royal decree of June 25, 1880, which provided that "There appertains to the general directorate of civil administration the hearings and determination of the proceedings for composition of the regal lands, *and of the incidental proceedings to which they give rise.*" The power of the directorate to hear the complaint of Pengson, and to investigate the conditions under which the deed had been issued, was thus specifically conferred by the decree which vested in this body the power to order the issuance of the deed. The decree, however, was promulgated by the Governor-General, who was the head of the body, and the effect of his orders was fixed by article 12 of the decree of the *Governor-General of the islands*, dated September 9, 1874, to wit:

> The resolution of the director-general of civil administration in all matters which are in his charge shall produce "*estado*" (shall be final) provided that *they have not been amended by my authority*, and they shall be approvable before the minister of foreign affairs through this general government, or by taking the contentious character before the chamber of the supreme court (audiencia) designated for hear-

ing these matters. (Berriz, Guía del comprador de terrenos realengos, p. 394.) (Rec., p. 82.)

The power to revoke title to public land by royal decree was expressly recognized in a resolution passed November 6, 1875, by the council of state, and published in the Gazette of Madrid of January 7, 1876. By this resolution the administration of the State was discharged from the complaint made against a royal order whereby the sale of a pasture ground belonging to the public land in Hellin, province of Albacete, was made null and void owing to an error in the estimate of its capacity at the time the sale of same at public auction was advertised. Said pasture ground was purchased as having a capacity of 960 fanegas, while as a matter of fact it had a capacity of 1,517 fanegas.

That case is therefore on all fours with the one here presented, except there the land had been actually purchased and paid for by the purchaser, while here the deed was issued upon a claim of prescription. The ground upon which the order was based was the same in both cases, to wit, a mistake as to the land transferred, which (in the language of the resolution of the council of state) "constitutes a substantial defect in the sale, enough to make the same null and void."

In the royal decree of May 10, 1884, it was declared that "a constant jurisprudence based upon reasons arising from common interest gives to the administration of the State the power to recover by itself

the possession of its property, provided the usurpation has been recently committed or can be easily proved," and assigns a term of one year for that purpose. (Alcubilla, Diccionario de la Administracion, vol. 4, 5th ed., p. 387.) The same principle will appear in authorities cited in support of the following propositions.

Third. *The administration alone could annul administrative actions, and the courts had no jurisdiction over the same.*

The royal council of Spain in a decision of September 14, 1849, among other things said:

> Administrative actions can not be annulled, modified, or construed except by the administration, either governmentally or judicially, inasmuch as the interference of civil courts for the purpose of passing upon the validity or nullity of such actions would be a violation of article 66 of the constitution, and would entirely destroy the independence of said administration as set forth in the laws and in articles 42, 43, and 64 of said constitution, relative to the power of the government for the enforcement of the laws and the maintenance of public peace under ministerial responsibility.
>
> * * * * *
>
> II. Any interpretation of the constitutional principles and of the laws, whereby the judicial authority is regarded as having power to annul administrative actions, would not only be in conflict with said articles of the constitution and would confound the dis-

tinct attributions of the public power according to their different ways of procedure, but it would create troubles for the government and raise serious obstacles to its free and untrammeled action, finding its progress often checked by decisions of the courts, and thus compelling it to attack the inviolability of a *res adjudicata* or to neglect the sacred duties which the constitution has imposed upon it by intrusting to it the enforcement of the laws and the promotion and protection of the moral and material interests of society.

* * * * *

V. To the end that *unjust and arbitrary actions of the administration may be remedied, and the rights of individuals protected from injuries which they may suffer from orders which are illegal either in substance or in form, issued either through ignorance or in bad faith by administrative officers, the laws created the appeals before a hierarchical superior in the line of the active administration, and before administrative courts through the contentious means when rights are alleged to have been injured.* (Alcubilla, Diccionario de Administracion, 5th ed., vol. 1, pp. 171, 172.)

The Supreme Court of Spain recognized the principle here stated in holding that "it is incumbent upon the administration and the contentious courts alone to decide upon the validity or nullity of the actions of the administration." (Dec. Sup. Court, June 30, 1881.)

The decree of June 17, 1889, published in the Gazette of Madrid August 25, 1890, declares that—

> The review of its own actions, and consequently the affirmation, modification, or annulment of the same, is incumbent upon the administration exclusively, either by the governmental or the contentious means, and in no wise can such actions be submitted to the courts of justice for finding and decision even if they gave rise to contracts or obligations of purely civil nature. (Macaya, Contentious Administrative Procedure, p. 197.)

The same principle was more clearly applicable to the Philippine Islands under Spanish administration, because there the powers of the administration were more ample and those of the courts of justice more limited than in the mother country.

In articles 1, 2, and 3 of the regulations approved by royal decree of July 4, 1861, for the settlement of disputes arising between judicial and administrative officers of the colonies over jurisdiction and authority, it was provided:

> Article 1. The superior civil governors of the colonies are the only officers who may raise questions of jurisdiction and authority, and shall only do so in those matters that are cognizable by the administration in general. Commanders in chief of the army, commanders in chief of the navy in naval posts, and other superior authorities shall confine themselves to notifying the said governors when they shall deem their powers in administrative matters to have been interfered with by the proceedings of the tribunals or courts.

> Article 2. The judicial authority can not challenge the powers of the administration nor admit petitions for possessory injunctions against the decisions rendered by administrative authorities or corporations, but it may send up to my Government the complaints against abuses of power or incompetency as provided for in article 45, paragraph 10, of the organic law of the council of state.
>
> Article 3. The interested parties may make a plea before the administration questioning the competency of the court or tribunal. This plea shall be made before the administrative authority who may hear the case. (Berriz, Guia del Comprador de Terrenos Realengos, p. 269.)

Therefore, the Governor-General of the islands was the only authority who could raise questions of jurisdiction in those matters which were cognizable in general by the administration. Judicial authority could not challenge the authority of the administration nor admit applications for possessory injunctions against the decisions of the administrative authorities and corporations.

This question received elaborate consideration in a case which arose over a royal decree annulling the sale of some houses by the State, and the result reached and principles upon which it was based were expressed as follows:

> A *contentious-administrative* appeal having been taken from a royal order whereby the sale of some houses by the State were ren-

dered null and void, the fiscal objected to its allowance. Thereupon the tribunal ordered said fiscal to show its competency to take cognizance of the matter, and the latter stated that the tribunal should continue in the hearing of the case, deciding the same upon its merits and required it not to abstain itself from taking cognizance of the said matter, as a bill of review is ready for filing, on the ground that contracts of sale of national property are governed by laws of purely administrative nature and their collateral issues involve no legal questions, the controversy being confined to the interpretation of the administrative agreement or to the powers of the administration to declare such contract null and void, the ownership of the property sold by the State creating no civil but administrative right, and that in such contracts said administration does not act as a body politic, as it does not relinquish its powers, which only serve to regulate, retaining the same whereby it makes sales null and void, compels administratively, etc.

In a decision of July 4, 1889 (G. of September 6, 1890), the tribunal held itself by a majority vote unqualified, on the ground that questions of national property and the collateral issues arising therefrom are of civil nature, as article 10 of the law of February 20, 1850, under which, by exception and for political reasons, they were tried before *contentious-administrative* tribunals, has been repealed by No. 2 of article 4 of the law of September 13, 1888, which excludes civil matters

from the jurisdiction of said tribunals, i. e., such matters wherein the injured right is of a civil nature and which grow out of the actions of the administration as a juridical person, and as susceptible of rights and obligations, and in such capacity it acts in said contracts; and on the further ground that if in enacting the latter law an exception were contemplated as to said matters from said article 4, it would have been so stated as it was done in article 5 regarding the matters excepted therefrom, and this is in no way a bar to its continuing to hear governmental proceedings relative to said questions, the final settlement of which is the act of conciliation to be attempted by the parties before filing a suit before ordinary tribunals.

A special vote was taken whereby the tribunal was declared to be qualified, repealing the royal order objected to, on the ground that the administration, in enforcing the disentailing laws, acts sometimes as a juridical person and sometimes as a social power, having in the first capacity the same rights and obligations as the other citizens, and in the second the jurisdictional powers granted to it by said laws, wherefrom the tribunals derive their competency to restore the law to its former condition which was altered by the actions of said administration done in either capacity; and on the further ground that the rendering a formal sale between private individuals null and void, the purchaser, who was in a peaceful possession thereof, not having been made a party to the action, implies a proper pro-

ceeding which is an attribute of the administration as a power in the State, and in performing the same it did not act as a body corporate and politic, because it had neither more nor less powers than the other citizens, the redressing of the injured right coming under the *contentious-administrative* jurisdiction; furthermore, the position of the parties upon the trial has been changed.

Upon the filing by the fiscal of the bill of review against said decision, on the ground that the administration in issuing the royal order to which an exception was taken acted in the performance of its governmental functions and not as a juridical person, and upon hearing the council of state in full, which held the bill out of order, and since the tribunal abstained from taking cognizance of the case, the cabinet of ministers decided to set aside said decision and that the tribunal should pass upon the merits of the case according with justice, on the ground that the royal order refers to an act performed by the administration as a public power and by virtue of the authority granted to it by the disentailing laws, and not as a body politic, and therefore the question is an administrative matter coming under its exclusive jurisdiction, there being no other remedy against said royal order except the *contentious-administrative* appeal. (R. D. of Nov. 22, 1890. Macaya, *Contentious-Administrative* Procedure, pp. 165, 166, and 167.)

It was decided, therefore, that inasmuch as the royal order which declared null and void the sale

by the State of some houses which were considered as disentailable, was made by the administration as a public power and by virtue of the authority conferred on it by the disentailing laws and not in a judicial capacity, the question relative to the nullity of the order was an administrative matter cognizable only by the administration, and no other remedy was available against the order except a contentious administrative appeal.

Likewise, the order of the Governor-General nullifying the title issued to Jose Mercado was made by him under the authority conferred on him by the administrative laws and not as a juridical person, and the courts had no jurisdiction over the matter.

Fourth. *A special body was designated before whom the validity or justice of an administrative order might be questioned, and such order could be avoided in no other way.*

Sections 7 and 8 of the royal order of June 7, 1878, provided as follows:

> The resolutions of the governor-general in connection with matters of government or in pursuance of his discretionary powers, and those of a general or regulative nature, may be revoked or amended by the Supreme Government whenever it decides that they are contrary to law, to regulations, or to provisions of a general character, or that they are inimical to the proper government and good administration of the islands, and also whenever claims are filed against them by a private individual who considers that his right has

> been prejudiced, provided they are not to be subject to procedure *en la via contensiosa* before the *consejo de administracion*, before a corporation, or before the governor-general himself, who might consider that the interests of the administration had been prejudiced.
>
> The proper remedy against the *final* decisions of the governor-general is the *contentious administrative* one, subject to existing provisions of law. (Berriz, Guia del Comprador de Terrenos realengos, p. 379.)

What is meant by the word "final" is shown in article 2 of the decree of September 13, 1888, where it is said:

> For the purposes of the foregoing article the decisions of the administration shall be considered final when they are not appealable through administrative means, whether they be final or interlocutory, if the latter decide either directly or indirectly the case on its merits in such a way as to put an end to such a means or to render its continuance impossible.

This definition was, of course, given in a law put in force after the decree annulling Mercado's deed was made, yet it appears to be only a statutory interpretation of what the meaning of this term was as used in the Spanish law.

These contentious administrative proceedings were brought before a special court, the *seccion de lo contensioso*, constituted as a tribunal which was attached to the administration, and was not a part of the general judicial system of the country.

In conformity with the eighth section of decree of June 7, 1878, article 26 of the decree of July 4, 1861, which is the organic decree of the administration councils for colonies, restored by royal decree of March 3, 1875, provides:

> Any person who shall consider that his right has been prejudiced by reason of a decision of the superior civil governor or of the superior administrative authorities, considered as final, shall be entitled to appeal from it *en la via contenciosa*, in the manner and form provided in the regulation prescribing the procedure in connection with contentious business in the administration of the colonies.

The same rule was laid down in article 1 of the rules of procedure relative to contentious administrative matters pertaining to the colonies, which was also approved by royal decree of July 4, 1861, in the following terms:

> Any person considering himself prejudiced by reason of any resolution adopted by the administration, considered as final, according to the provisions of article 26 of the royal decree of this date relative to the organization and powers of the *concejo de administracion* of the colonies, shall be entitled to file a complaint against it before the *seccion de lo contencioso* of the respective council within ninety days in the American provinces and one hundred and twenty days in the Philippines from the date on which the resolution which is the subject of the appeal was made known to him by administrative channels.

By this rule Jose Mercado should have sought his remedy before a contentious section of the administrative council within one hundred and twenty days from the date on which he was notified of such resolution; or, if it be considered that it was not incumbent upon Mercado to take any action because he had executed a deed for the land to Juan Roura, the correction of the order should have been sought within one hundred and twenty days after notice was given to Maria Roura in 1890.

It is insisted by plaintiffs in the courts below that the decree of the Governor-General was not a matter of contentious administrative character, but one which fell within the discretionary power of the Governor-General. As will be hereinafter shown, there could be no difference in principle, but it is clear from the twenty-seventh article of the decree of July 4, 1861, that this contention is erroneous. In said article it is provided as follows:

> The *seccion de lo contencioso*, constituted as a tribunal, shall take cognizance of matters connected with the administration of the provinces of this nature (as a general rule, decisions which become final, article 26), and more particularly in the following:
>
> * * * * *
>
> (7) In connection with the fulfillment, settlement, cancellation, effects, or incidents arising under lease, sale, or grant made of state property, *when in the two latter cases the original act of acquisition is at issue*, excepting suits for ownership.

Fifth. *The order of the Governor General annulled the deed or grant by which Mercado professed to take title to the lands, and all proceedings upon which said deed was based; and the distinction between the power of the administration to annul such proceedings and the deed executed thereon, and its power to determine the validity of titles between private individuals, and to determine questions arising under titles issued prior or subsequent to and not connected with the deed is distinctly recognized in numerous authorities, it being established by decrees and held by the courts that the latter power is vested in the courts while the former is vested in the administration.*

Article 1 of the royal decree of September 20, 1852, establishes this principle in the following language:

> But the actions, over ownership or whatever others which are based on prior or subsequent titles *independent of the sale or lease*, shall always be within the jurisdiction of the ordinary courts. (Berriz, Guia del Comprador de Terrenos, 229.) (Rec., p. 83.)

Article 27 of the royal decree of July 4, 1861, which deals with the jurisdiction of the *seccion de lo contencioso*, constituted as a tribunal, and which, as above stated, is not one of the ordinary courts, provides:

> The *seccion de lo contencioso*, constituted as a tribunal, shall take cognizance of matters connected with the administration of the provinces of this nature (as a general rule, decisions which become final, art. 26), and more particularly in the following:
>
> * * * * *

> (7) In connection with the fulfillment, settlement, *cancellation*, effects or incidents arising under lease, *sale, or grant* made of state property, when in the two latter cases *the original act of acquisition is at issue*, excepting suits for ownership.

The same distinction is recognized in the resolution of the council of state of May 2, 1866, which provides:

> As soon as a purchaser of public lands enters into the peaceful possession of a land sold by the State the administration ceases to have jurisdiction over *questions arising from matters which are independent of public auctions;*

also, in the resolution of January 11, 1867, which reads:

> As soon as a purchaser of national lands enjoys a quiet and peaceful possession of the land granted by the State the administration ceases to have competency over questions arising from *actions performed subsequent to the public auction or independent thereof;*

and in the following authorities:

> By relying upon titles of ownership not under administrative laws and prior to the appropriation by the State of land, an action for replevin of a purely civil nature, the cognizance of which belongs to the ordinary tribunals, is maintained, and the decision to which an exception has been taken puts an end to the governmental means, thus enabling the plaintiff to apply for remedy to the proper

authority. (R. O., December 24, 1875; G., January 25, 1876; Macaya, *Contentious Administrative* Procedure, p. 106.)

Although in the complaint no express demand is made for a declaration of a right of ownership, the nullity of the sale is based, however, upon civil titles, issued prior to and independent of the public sale, and the matter comes under the jurisdiction of ordinary tribunals. (R. O., November 8, 1876; G., 18; Macaya, *Contentious Administrative* Procedure, p. 106.)

The complaint does not deal with any collateral issue arising from the auction sale (said complaint prayed for a declaration that the administration can not by itself appropriate lands in the possession of purchasers under a title registered in the land registry, in addition to a declaration that the sale was null and void), but it implicitly sustains the right to the alienated lands by relying upon the ownership thereof and upon civil titles issued prior to and independent of the public sale, and the matter comes under the jurisdiction of ordinary tribunals. (R. O., November 8, 1876; G., 18; Macaya, *Contentious Administrative* Procedure, p. 106.)

The action for the recovery of the ownership of land sold by the State as disentailable *based upon titles issued prior to the public sale,* is cognizable by the ordinary tribunals. (R. O., April 7, 1879; G., 11; Macaya, C. A. P.)

Where the right of a claimant to the ownership of some property is based upon purely civil titles *issued prior to the public sale,* which

the State may have done pursuant to the royal order of September 20, 1852, the matter falls within the jurisdiction of the ordinary tribunals. (R. O., April 28, 1879; G., May 2; Macaya, C. A. P., p. 106.)

The action for the replevin of property sold by the State based upon titles *issued prior to and independent of the public sale* comes under the jurisdiction of the ordinary tribunals. (R. O., March 28, 1883; G., April 4; Macaya, C. A. P., p. 107.)

When the alleged injury is due to the failure of a royal order to acknowledge the validity of purely civil titles *issued independently of the administrative actions having for their object the disentailment of national property*, only the ordinary tribunals are authorized to find on the rights claimed by the plaintiff to the useful ownership of a land, the question turning upon the kind of ownership possessed by the State, and the decision set out in the royal order and the cognizance taken by the administration are not a bar to a judicial complaint, involving the fulfilment of the provisions of article 173 of the instructions of May 31, 1885. (R. O., July 9, 1883; G., August 19; Macaya, C. A. P., p. 107.)

An action for the recovery of land alienated by the nation based upon a title *issued prior to the public sale* does not come under the jurisdiction of the *contentious-administrative* court. The royal order which was issued refers to article 173 of the instructions of May 31, 1855, which provides for a complaint to be made to the government before an ordinary hearing

can be had thereof. (R. O., January 31, 1884; G., February 24; R. O. of March 28, 1884; G., April 18; Macaya, C. A. P., p. 107.)

The *contentious-administrative* authority has no jurisdiction in an action for the recovery of the ownership of lands sold by the nation *based upon civil titles issued prior to and independent of the public sale*, in view of the decision set out in the royal order regarding the provision of article 173 of the instructions of May 31, 1855, and the plaintiff may resort to the ordinary tribunals. (R. O. of March 28, 1884; G., April 18; Macaya, C. A. P., p. 108.)

A claim for the recovery of a mountain sold by the State, *on the ground that it was private property acquired under purely civil titles issued to and independent of the public sale*, comes under the jurisdiction of the ordinary tribunals, the royal order appealed from being equivalent to the act of conciliation, and therefore in compliance with the provisions of article 173 of the instructions of May 31, 1855. (R. O., July 29, 1866; G., August 19; Macaya, C. A. P., p. 108.)

Where the right of the plaintiff is based upon deeds of sale of some disentailed property, and upon an entry in the land registry made before the purchasers took possession thereof, in accordance with the royal decree of September 20, 1852, the question comes under the jurisdiction of the ordinary tribunals. V. P. (S., March 18, 1892; G., October 21; Macaya, C. A. P., p. 111.)

Hence, when the order or decree of the Governor-General or the administration relates to the transfer

itself of the land and the proceedings upon which the transfer is based, and the question is whether such proceedings and title deed are valid, such order falls within the jurisdiction of the administration and is not one for the courts.

Sixth. *If the decree revoking the deed to Mercado fell within the discretionary power of the Governor-General and was not reviewable by contentious-administrative proceedings, nevertheless a specific method of review of the same was provided, and such method was exclusive.*

It was insisted in the lower courts by plaintiffs that the order in question was not of such character that could be reviewed by the contentious-administrative method, but that it fell rather within the discretionary powers of the Governor-General. If this contention is correct and the Governor-General was vested with a discretionary power of annulling titles, the order can not be treated as a nullity. Moreover, a method of relief against all resolutions of the Governor-General relating to matters of government or in pursuance of his discretionary powers or of a general or regulative nature was provided by section 7 of the royal decree of June 7, 1878, which is above quoted; and that remedy was by appeal to the Supreme Government. The fact is especially emphasized that such remedy might be invoked against orders of the Governor-General of the character mentioned whenever they "*are contrary to law, to regulations,*" etc., thus clearly implying that *no decree of this character should be treated as a nullity, although it might be contrary to some positive law, but that it had to be revoked, if revoked at all, by*

the Supreme Government on application thereto. Moreover, decrees affecting private individuals were made subject to the same method of review.

Therefore, the order of the Governor-General was valid until revoked by the method prescribed, regardless of the capacity in which he was acting at the time said order was made.

Seventh. *The cases and orders relied upon by plaintiffs in the courts below are not in point, and do not sustain the position contended for by them.*

(1) Plaintiffs quote from the royal decree of December 30, 1863, to the effect that "to the judicial authority belongs the jurisdiction over cases of private persons upon matters already tried in the ordinary courts, and relating to contracts the execution of which is in litigation." This is in no way applicable, because it refers to questions arising between individuals upon private matters which were the subject of litigation in the lower courts, wherein they were decided, and upon which formal contracts were entered between the parties to the suit. (See royal decree No. 220 of volume of decisions Council of State on Jurisdictions, from October, 1860, to December, 1864.)

(2) The royal decree of April 15, 1864, provided that—

> It is within the jurisdiction of the courts of justice to define or declare the extent of the effect of rights of property and absolute ownership of waters.

This decree referred to a suit pending before the council of state on appeal between Don Jose Morello

and other tenants of the tract of land belonging to the Catalunians. The council of state rendered a decision affirming the judgment handed down by the provincial council, but allowing the appellants to avail themselves of whatever remedy they might think themselves entitled to in a proper jurisdiction. The decision not only does not contain any doctrine applicable to the question at issue, but settled a controversy between private individuals on the right to use certain waters, by sustaining the administrative decision settling such question.

(3) The decision of the council of state of June 30, 1888, to the effect that the administration can not decide questions involving ownership of waters was rendered in a litigation between two municipal governments as bodies corporate and politic, and referred not to the right to use common waters, but to the ownership of the waters or river based on a title under the civil law. (No. 585 of the volume of decisions of the council of state, January, 1867, to January, 1869.)

(4) The executive decree of February 10, 1874, that the judicial authority had jurisdiction over cases involving private possessory rights is likewise inapplicable. The distinction between such cases and a case which involves the validity of an order annulling a sale of land by the government and the proceedings upon which the sale is based has heretofore been fully stated and discussed. This distinction is recognized in the decree cited. (See

decree under No. 548, volume of decisions on competencies of council of state, from January, 1865, to August, 1874.)

(5) The decision of the Supreme Court of Spain of May 4, 1870, wherein it was said—

> The courts *contencioso administrativo* have no jurisdiction to try cases of real estate claims; they should be addressed as formal applications to titles of ownership,

is in no respect in conflict with the contention of the Insular Government in this case. The facts and questions decided in that case were as follows:

> A proceeding having been instituted pursuant to established rules upon motion of D. Rafael Jimeno Gonzalez, in the name of his father, D. Antonio, for the recovery of an improved land together with four houses erected thereon, which was sold to him by Count de Olocau, the secretary of the treasury, in accordance with the suggestions of his legal adviser and of the "Dirección de Bienes y Propiedades del Estado," overruled the said motion by a royal order of April 30, 1868, and declared the governmental means to be exhausted in order to give the mover an opportunity to avail himself of his right to appeal to the courts of justice, if it were convenient for him to do so, for the recovery of the said property which had been appropriated by the government on the ground that they belonged to the corporation (Cabildo) of Cuenca, and that at the time the application was made for the recovery of said property, with a promise

to pay the annuities thereon, the applicant failed to establish properly his legal capacity and right as heir to the estate claimed by him. D. Rafael Jimeno Gonzalez appealed to the council of state praying that the said royal order be set aside, and the property involved therein be declared to belong exclusively to the claimant. The contentious procedure was declared to be contrary to law on the ground that the royal order appealed from was issued for the purpose of declaring the governmental means exhausted, in order that the applicant might appeal to the courts of justices, and that it caused no injury to any of the rights he was seeking to enforce, and that furthermore the applicant prayed for a declaration to the effect that he was the exclusive owner of the property claimed by him, thus making a true claim of ownership the cognizance of which belonged to the regular courts. (Administrative Jurisprudence on Competencies, vol. 18, p. 473.)

(6) It is unnecessary to discuss the royal decree of November 23, 1888, as it was made nearly three years after the date of the order of the Governor-General which is here collaterally attacked. However, there is nothing in the various articles of this royal decree referred to which are to any extent contrary to the principles heretofore insisted upon.

(7) The resolution of the council of state of November 6, 1875, wherein it was held that the administration is not authorized to appropriate private property or alter in any way the possessory rights,

dealt with a royal order of the minister of the treasury confirming another resolution of the general board of the "Direccion General de Propiedades y Derechos del Estado," which sustained a complaint against a detainer of property of the State ordering the appropriation by the latter of the property so detained. The holder of the property showed that he and his predecessors had been in quiet and peaceful possession thereof for over fifty years. The question therefore decided was one of ownership, based *not upon an administrative action, but upon previous titles of civil nature by the claimants to the property appropriated by the State.*

(8) The Supreme Court of Spain on November 26, 1872, held that—

> To the courts of justice belong the jurisdiction over all cases of possession or ownership of common lands, even though it be within the powers of the administration to preserve and keep those lands whenever the usurpation is recent.

And their decision was relied upon by plaintiffs in court below. However, upon this authority defendant could well base its defense, as it expressly recognizes the power of the administration to preserve and keep the lands whenever the usurpation is recent, and, as heretofore shown, the time within which action may be taken by the administration is one year.

From the various decrees and decisions above cited it is clear that an order of the character of

the one here in question was not *ultra vires* and a nullity, as orders and decrees are held void by the courts of this country when pronounced by a body or person having no authority over the subject-matter. There existed no written constitution or statutory law promulgated by a higher authority than the Governor-General which undertook to strip him entirely of the power to perform acts of this character. His authority to do so was fully recognized; but it was also recognized that his orders might impose a hardship upon the public or private individuals; and the method above mentioned was provided whereby relief against such orders might be obtained. The judgment of the supreme court of the Philippine Islands should, therefore, be affirmed.

J. A. FOWLER,
Assistant Attorney-General.

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ROURA *v.* GOVERNMENT OF THE PHILIPPINE ISLANDS.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 35. Argued November 3, 1910.—Decided November 28, 1910.

Jurisdiction as to amount in controversy sustained on the facts disclosed in affidavits filed in this court, there being none filed in rebuttal.

The decree of the Supreme Court of the Philippine Islands denying a petition for registration of title to land on the ground that the petitioner had no legal title thereto under Spanish law, sustained.

Issue in the courts below having been confined solely to the legality of deeds on which the petitioner sought to register and which those courts held to have been fraudulently obtained and illegal, the title could not be registered on claim of quiet possession subsequent to the obtaining of those deeds and in regard to which there was no proof in the record.

8 Philippine Reports, 214, affirmed.

THE facts, which involve the right of a claimant to land in the Philippine Islands to register the title thereto, are stated in the opinion.

Mr. Frederic R. Coudert, with whom *Mr. Howard Thayer Kingsbury* was on the brief, for plaintiffs in error.

Mr. Assistant Attorney General Fowler for defendant in error.

MR. JUSTICE WHITE delivered the opinion of the court.

Maria and Juana Roura petitioned the Court of Land Registration to register their alleged title as undivided equal owners of a piece of real estate situated in the pueblo of San Miguel de Mayumo, province of Bulacan. See for the general functions of the Court of Land Registration, *Carino* v. *Insular Government*, 212 U. S. 449; *Reavis* v. *Fianza*, 215 U. S. 16. This writ of error is prosecuted to a judgment of the Supreme Court affirming the trial court in refusing, on the opposition of the insular government, the prayer for registration.

The right to prosecute the writ is challenged on the ground that the amount involved is not sufficient to confer jurisdiction, and because there are no questions arising adequate alone to give jurisdiction. Without going into detail, we say, in view of the affidavits filed in this court concerning the value of the property, after allowing for the elements of speculation possibly entering into the amount fixed in the affidavits, we think, in the absence of affidavits in rebuttal, a sufficient showing has been made to give jurisdiction. We therefore overrule the motion to dismiss and proceed to the merits.

To reduce the case to the issues essential to be decided requires a statement of the source and history of the title whose registry was asked. We therefore at once state the salient and indisputable facts on that subject. On the twenty-fourth of March, 1885, by act before a notary public, Jose Mercado, declaring that he owned and possessed two parcels of irrigated land situated in Sibul, pueblo of San Miguel de Mayumo, sold the same for cash to Juan Roura. A few weeks after, on May third, 1885, the acting petty governor of the pueblo of San Miguel

de Mayumo issued a certificate, stating that Jose Mercado had declared to him that he possessed and owned three parcels of irrigated land in the pueblo, two of which are rice lands and the other serves as a building lot and garden, where he has his house erected; that he had possessed the land peaceably and uninterruptedly for more than thirty years, and asking that a certificate be issued as to the truth of these declarations. It was recited in the certificate that the "commune of leading citizens" was convoked and that they unanimously declared that the statements of Mercado were in effect true. The certificate was signed by the petty governor and the individual citizens who had been convoked to pass upon its statements. The purpose of obtaining the certificate does not appear, but it is inferable that it was intended to be used in a proceeding to be instituted by Mercado to obtain a recognition from the proper administrative authorities of his alleged title to the land. We say this, because four months after it appears among the files of a proceeding which, on September 10, 1885, the General Directorate of Civil Administration, under the authority vested in it by the regulations authorizing it to adjust and compose outstanding claims of title to the royal and unreclaimed lands, directed a deed to be issued to Mercado covering two tracts of land in the pueblo of San Miguel de Mayumo upon the payment of two and a fraction pesos. The sum thus to be paid, it was declared, represented ten per cent of the assessment of the land, and was exacted "for the expense of surveying and measurement to be made by a deputy surveyor of unreclaimed lands and the fees for the title deed, according to the provisions of the decree of the General Government of these islands of September 12, 1882, approved by royal order of July 25, 1884." On October 19 following, the Director General of Civil Administration executed, on behalf of the Directorate, a deed to Mercado of two

pieces of real estate situate in the pueblo of San Miguel de Mayumo, the description of the second of which pieces in a general sense conformed as to its exterior boundaries to the description of one of the pieces which had been previously sold by Mercado to Roura, and also of one of the pieces described in the certificate of the petty governor. In making this deed the Director General declared that it was executed conformably to the decree of the General Directorate of September 7, 1885, by which decree the ownership of the land had been "awarded gratuitously to Mercado." Shortly prior to the making of the deed by the Director General to Mercado, that is, on September 25, and shortly following, on November 9, deeds authorized by the General Directorate, to unreclaimed land in the pueblo of San Miguel, were made, the one in favor of Regino Pengson, and the other in favor of the parish priest of San Miguel. While the description of the land embraced by these two deeds or the surveys cotemporaneously made concerning the same are not in the record, it is established that the land which they embraced was surveyed by the official surveyor who surveyed the Mercado land, and that it was not supposed by the Directorate that there was any conflict between the three claims.

Shortly after the making of the Mercado deed it would seem that a complaint was made to the Directorate of Civil Administration by Pengson, based upon an alleged conflict between the descriptions of the land embraced in the composition sale made to him and that described in the composition deed to Mercado. The precise character and extent of this conflict is not disclosed, but it is inferable from the documentary evidence that it related to the situation of a medicinal mineral spring, which was apparently claimed by both, Pengson under his composition and by Mercado under his. The matter was heard by the Directorate of Civil Administration, and

the result of the investigation of that body was by it reported to the Governor General, with its recommendation for his action.

The Governor General, conformably to the recommendations made to him, issued an order annulling the composition proceedings and the deeds issued thereunder to Pengson, Mercado and the parish curate. It was expressly directed that all the proceedings in the several compositions be annulled, reserving the right of the parties to apply for a new composition. It was further directed, however, that before such new composition be allowed a competent surveyor be appointed, who should mark out the boundaries of the medicinal mineral spring, with the appurtenant land necessary to enable the public to enjoy its benefits, and that such spring and the land so marked out should be held as public property, reserving to private owners the right to demand compensation for any private land taken in the execution of the order. In addition, the order commanded the local authorities to demand from Pengson, Mercado and the parish priest a return of the deeds issued to them which the order cancelled; that the order be transmitted to the proper provincial and local authorities to be executed and put of record, in conformity to law. The order was published in the official gazette at Manila, and was undoubtedly communicated through the proper administrative channels to all the administrative officers who were concerned with its execution, including local officers of the pueblo of San Miguel. The grounds upon which the Directorate recommended and the Governor General annulled the composition proceedings, as above stated, were thus enumerated in the official files:

"Account having been given by this central office to his excellency the Governor General of the proceeding instituted by Don Jose Fores on behalf of Don Regino Pengson relative to a claim of lands granted by composition in the barrio of Sibul, pueblo of San Miguel de

Mayumo, it being found that not only the land granted to the aforesaid Pengson, but also those granted to Jose Mercado and to the parish priest of San Miguel, do not agree in their location or boundaries with those set forth in the title deeds issued by this general directorate under date of November 9, October 19, and September 25 of last year, respectively, and that these differences originate in errors committed by the expert appraiser of lands, Don Jose Moreno, when he practiced the acts relative to said lands in the capacity of acting deputy of unreclaimed lands. And it being found that the Sibul Spring has never been known as private property, nor is it included in land which may have this character, but rather that those medicinal waters have been utilized, without any hindrance or obstacle, not only by the residents of the pueblo but by the public in general, as is evidenced amongst other things by a certificate of the municipal authorities of San Miguel de Mayumo, and is confirmed by the unanimous and universal voice of the public, and it being found that the general inspection of unreclaimed lands and this general directorate have been taken unawares by the aforesaid expert to issue, as they did issue, by virtue of the surveys made by him, titles of ownership by composition of the lands bordering upon the Sibul Springs, by reason of which it might be believed that the spring is found included within some of them, and that the public and free zone which all springs have and need for their enjoyment had disappeared, and considering that the three proceedings referred to embrace a vice of nullity from their beginning, because the data which appear in the notes of survey and measurement of the lands and the plans which accompany them are not correct, and consequently the title deeds issued do not describe the lands such as they really are, and considering that the party responsible for this discrepancy is the expert, Don Jose Moreno, who, when called to explain

the errors committed by him, has not done so satisfactorily, errors all the more inexcusable in that there are involved parcels relatively small and contiguous and surveyed and measured with an insignificant lapse of time between one and the other, giving rise to the suspicion that said errors have not been caused solely by neglect nor lack of zeal, but voluntarily, and with knowledge of the mistakes which are contained."

We state in a summary way the further official action concerning the medicinal spring, referred to in the order. The Governor General directed the proper provincial and local authorities to establish at the spring a sanitarium for the use of the public. But this not being carried out, it was suggested that the spring be placed under the control of private persons for the purpose of creating a sanitarium for the public benefit, with a moderate subvention from the treasury. This project also fell through, on the suggestion that private capital might not be willing to venture an outlay for the erection of the sanitarium because of the fear of outstanding claims to ownership of the spring and the dread that it might ultimately not be held to be public property. Subsequently the provincial and local authorities were directed by the Governor General to investigate and report concerning the existence of alleged claims to private ownership of the spring, and as incident thereto to expressly report concerning its possession and use during the past. This order brought out an official statement as to the previous composition deeds, their annulment, etc., as we have stated them, coupled with a renewed declaration that investigation disclosed that the spring had never been possessed by any private person, but had always been enjoyed by the public and used as public property. Finally, in September, 1895, from Madrid, a royal decree was issued, the necessary effect of which was to sanction the previous action of the local authorities. This order

directed that the spring, with adequate appurtenant property, be sold at public auction.

Long prior to this, in fulfillment of the order of the Governor General of March 5, 1886, in that year and on the twenty-third of that month, demand was made of the curate of San Miguel for the return of the deed made to him in consequence of the composition proceedings, and he declared that he had mislaid the deed and could not find it. On the same day of the same month and year a demand was made both on Mercado and Pengson for their deeds. Pengson declared that, having filed his in the proceedings to vacate which had taken place before the Directorate, he did not have the deed in his possession. Mercado declared that he had sold the land and had delivered the deed to the purchaser. Not having disclosed who the purchaser was, further orders to call on him for disclosure were made, but he was absent and could not be reached. Afterwards, in October, 1890, Mercado having died, his widow, in answer to an official demand upon her, declared that the property covered by the composition had been conveyed by her husband during his life to Roura, to whom the deed had been delivered, and that Roura being dead, the deed would probably be found in the possession of his heir and daughter, Maria Roura, and she upon demand being made upon her, declared that during the lifetime of her father she had heard the title deed mentioned, "but at the present time I am ignorant of its whereabouts." Although the precise date does not appear, it is certain that Roura died testate, and that, by an amicable adjustment and extrajudicial partition of his estate, his two daughters, Juana and Maria Roura, petitioners before the Court of Registration, became entitled to one undivided half each of his rights in and to the land conveyed by Mercado, if any such there were.

With this prelude, we are brought to the initiation of

the proceedings in the Court of Land Registration, now before us.

The petition was filed on September 19, 1904. It is alleged that the two plaintiffs were the equal undivided owners of a tract of land, which was described, the description evidently relating to one of the tracts of land which had been described in the deed from Mercado to Roura, and in the certificate issued to Mercado by the petty governor. It was besides alleged that the title of the petitioners was derived by them as heirs of their father, and that he had derived his title from the conveyance made to him by Mercado. It was averred that "said property described is not occupied by any one," and, aside from any inference of possession to be drawn from the alleged ownership, there was no averment whatever of possession. Various documents were annexed to the petition, among which it is only necessary to mention the certificate issued to Mercado in 1885 by the petty governor and the deed made by Mercado to Roura.

The insular government appeared and opposed the prayer for registration, on the ground that the petitioners had no title to the property, and that it was a part of the public domain. When the case was called for hearing the husband of Mrs. Modesta Pengson appeared in her behalf to resist the registration applied for, on the ground that she held title to the property, and time was given to formulate an opposition, but this was not availed of, and no further action was taken on behalf of Mrs. Pengson. At the trial the petitioners offered various documents to establish their heirship of their father, which need not be referred to. Declaring that the property to which the petition related was that secondly described in the deed from Mercado to Roura (containing the spring), the petitioners offered that deed and the plan or sketch of the property, which was made in 1885, at the time of the composition proceedings. In addition they offered an

official file containing one of the administrative reports which we have stated, that is, the one saying that it would be unwise to seek to procure private capital for the purpose of establishing a sanitarium until the question of whether there was a private claim to the property was clearly settled. The Government offered files of the administrative proceedings, showing in great detail the facts which we have previously stated, that is, the order for composition in favor of Mercado by the Directorate, the deed to him, the controversy originated by Pengson, the decree of the Governor General vacating the compositions and annulling all that had been done under them, and, indeed, establishing all the facts as to notice, the investigation and report as to possession, and the ultimate making of the royal decree. The evidence being closed, counsel for the petitioner thus stated to the court the proposition upon which he relied to secure the allowance of the registration of the title as prayed:

"The court offers to hear the oral argument of Sr. Ferrer. Sr. Ferrer stated that he sought the Court of Land Registration to obtain title deed to the parcel of land which is the subject of the proceeding. The right which his principals invoked was derived from the right of the original owner, Don Jose Mercado, who acquired the same by virtue of the grant made by the Council of Civil Administration for a stipulated sum, in exchange for the parcel of land. The deceased, Juan Roura, father of the petitioners, acquired possession of this land by virtue of a deed of sale executed by Don Jose Mercado in his favor, and from him the petitioners inherited the same. After some time had elapsed the general government annulled that title by grant without returning the money consideration for the land, and without previously hearing the defenses which the aggrieved owner might set up, when, as a matter of fact, this matter ought to have been heard before the competent court. This is not legal; it

is an embezzlement, since it cannot be conceived that after the possession of this real estate had been lawfully granted and the cost thereof had been paid to the satisfaction of both parties, as is witnessed by the documents in evidence, all of the transaction should be afterward retroactively annulled.

"These points having been explained he requested the registration of the property in the name of his clients."

The court denied the prayer for the registration of the title. Summarily stated, it was of opinion, *a*, that the subject of making the composition as to the unreclaimed land and awarding a deed was within the administrative authority of the officials, as was also the right to revoke and cancel the deed within a limited time for error found to exist or fraud discovered to have been practiced in obtaining the deed; *b*, that it was unnecessary to inquire whether irregularities existed in the proceedings by which the deed was cancelled, or whether an abuse of administrative discretion had happened in those proceedings, because the Spanish law created express and exclusive remedies for the correction of such errors, and required that those remedies should be resorted to within a time designated, and did not therefore allow such complaints to become the subject-matter of ordinary judicial controversies; *c*, that as the deed, which was relied upon as the basis for registration, was the mere result of a composition proceeding and was, in its essence, not a contract upon a moneyed consideration, but a mere gratuitous award without the payment of a price, the question of error committed in the annulment proceedings came within one or the other of the systems of administrative recourse provided by the Spanish law, which, not having been availed of, operated to deprive of the right to complain judicially of the cancellation; *d*, that there was no room for holding that the right to registry obtained because of a prescriptive title, acquired under the composi-

tion deed to Mercado by virtue of article 1957 of the Civil Code, providing that "ownership and other property rights in real property are prescribed by possession for ten years . . . with good faith and a proper title." Because, first, from the date of the annulment of the title good faith had in any event ceased to exist, and, second, because of the absence of the essential element of possession, since "it has not been proved that there had been exercised, either before or after the declaration of nullity of the title, any possessory act on the part of the petitioners or of their predecessor. All effort of counsel for the petitioners consisted, after the opposition of the insular government was known, in proving that the former administration did not act within its powers in declaring the nullity of the title deed offered." The case having been carried to the Supreme Court, that court affirmed the judgment upon grounds substantially identical with those which controlled the action of the trial court.

Although we have concluded, from a consideration of the opinion of the court below, aided by the painstaking and full reference to the Spanish law contained in the brief on behalf of the insular government, that the court below was clearly right in its opinion as to the legal principles held to be decisive, we do not stop to state and review those considerations, because we think the argument at bar renders it unnecessary. We say this, because the argument for the plaintiffs in error in substance but proceeds upon the theory that, although the Spanish law was correctly expounded by the court below, nevertheless that law was inapposite because of conditions which it is insisted existed prior to and at the time the composition deed was issued and when the administrative order of annulment of that title was made. The proposition is thus stated in the argument:

"The position of the plaintiffs may be very briefly summarized as follows: In 1885 Jose Mercado was already,

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by virtue of his thirty years' possession, the absolute owner of the land in question. The composition deed of October 19, 1885, did not create his title, but was merely evidence of it. The decree of March 5, 1886, was wholly ineffectual to divest his ownership, and at most only affected the record evidence of such ownership. It is immaterial that no affirmative proceedings were taken by Mercado or his successors in interest to question the validity and effect of the decree of annulment. They were justified in relying on their undisturbed possession and awaiting adverse action, when it would be open to them to raise all such questions. This ownership, founded on possession, was in itself a property right, protected by the treaty of Paris and the Organic Act, and entitled to registration as a title in fee simple. The insular government is now asking this court to carry into effect even beyond its very terms a decree of a Spanish Governor General, made thirteen years before the cession, which is void on its face as in violation of the fundamental laws of the former government, and, by virtue of such void decree, to deny plaintiffs' ownership of lands which have been in their possession for fifty years—a possession which the Spanish Government never undertook to disturb."

And the theory of established possession upon which the contention rests is reiterated in many forms of expression throughout the entire argument. But when the statement of the case which we have made is considered it becomes apparent that this contention misconceives the case as presented, since it proceeds upon an assumption unwarranted by the pleadings and unsustained by any proof whatever. As we have seen, the case as made by the pleadings was rested solely upon the right to register resulting from the composition deed, without the slightest averment of possession prior to the time that deed was issued, except as it may be considered that such possession was alleged as a necessary result of the averments as to

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the deed. It is further evident that the validity of the deed to Mercado was the one issue which arose on the opposition of the insular government. That this was understood by both parties clearly results from the fact that not a particle of proof was offered concerning the possession prior to or at the time of the composition deed, irrespective of the administrative proceedings leading up to the issue of that deed and following on its annulment. This, moreover, is additionally demonstrated by the express declaration of counsel for petitioners concerning the matter for decision, made after the evidence was in and the case was ripe for consideration. That the trial court had not the remotest thought that such issue was before it is plainly manifest from its statement that all the effort of the counsel of petitioners was directed to assailing the competency of the administrative officers to avoid the Mercado deed and annulling the composition proceedings, and that no evidence whatever had been offered to prove possession of the property in controversy by Mercado or any of those holding under him from the date of the deed up to and including the time of the submission of the cause. That this conception of the issue also prevailed when the case was taken to the Supreme Court of the islands we think is plainly apparent from the assignment of errors, referred to by the Supreme Court in its opinion. We think it also conclusively results from the opinion of the Supreme Court, when considered as a whole, that that court also thought the issue presented to it was thus limited. True it is that a concluding passage in the opinion of the Supreme Court is referred to as indicating that the court thought that the question of the acquisition by Mercado of the title to the property by preëmption prior to the composition deed was involved. But we do not think the passage in the opinion, when taken in connection with its context, has the meaning attributed to it. If it had, it would be the merest obiter,

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since the pleadings did not raise that issue, and there was not the slightest proof concerning it. While it is not necessary, we deem it well to say that in reviewing the action of the court below we are, of course, confined to the record and the case therein made, and may not, as the result of mistaken suggestions as to the issues and proof disregard our duty by deciding, not the case as made, but an imaginary one, wherein issues not made and not presented below would have to be supplied, and whereby conjecture and surmise must be indulged to replace the total absence of all proof on a particular subject. So far as the unwarranted assumption concerning the subject of possession relates to acts done after the deed to Mercado, it is also disposed of by what we have said, and is besides completely answered by the express finding of both courts concerning the absence of all proof of possession during that period.

Affirmed.